Introduction

1 We were appointed as a committee of the National Joint Advisory Council following the Council's discussion on 24th March 1965 of a paper by the Ministry of Labour on dismissal procedures. We were asked to collect further information about dismissal procedures, to establish what would be a satisfactory procedure and to consider the promotion of such procedures in industry generally.

2 Our membership was as follows:

Chairman—	Mr. N. Singleton, C.B.	Ministry of Labour
	Mr. E. K. Clarke	Trades Union Congress
	Mr. K. Graham	Trades Union Congress
	Mr. J. L. Grumbridge	Nationalised Industries
	Mr. F. O. Jayne	British Employers' Confederation*
	Mr. J. P. Lowry	British Employers' Confederation*
	Mr. H. M. L. Morton	British Employers' Confederation*
	Mr. L. Stubbs	Trades Union Congress
Secretary—	Mr. R. S. Allison	Ministry of Labour

Mr. R. Boyfield was originally a member, but resigned in February 1966 when he left the Trades Union Congress. Our meetings were also attended by Mr. F. D. Lawton and Miss M. Towy Evans of the Ministry of Labour, and on a number of occasions by Mr. F. J. Swingler in place of Mr. Grumbridge; we were very grateful for their advice and assistance.

3 In this country dismissal has traditionally been regarded as a matter between the employer and the worker concerned. In recent years, however, the importance of giving workers a greater sense of security in their jobs, in the interests of improving industrial relations generally, has been increasingly recognised. This has played an important part in such legislation as the Contracts of Employment Act 1963 and the Redundancy Payments Act 1965. It is therefore appropriate to consider generally whether workers should not have more effective safeguards against arbitrary dismissal. It has been argued, too, that some other countries go much further than ourselves in protecting workers against arbitrary dismissal.

4 Interest in these questions has been further stimulated by the International Labour Conference's Termination of Employment Recommendation, 1963 (No. 119). The underlying principle of this is that "termination of employment should not take place unless there is a valid reason . . . connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service". The Recommendation lists certain

* Now Confederation of British Industry.

(96319) A*2

things that, among others, are not to be regarded as valid reasons, e.g. union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; seeking office as or acting as a workers' representative; the filing in good faith of a complaint against an employer alleging violation of laws or regulations; or race, colour, sex, marital status, religion, political opinion, national extraction or social origin. Other provisions concern appeals against termination; period of notice or compensation in lieu; protection of dismissed workers and criteria determining the selection of workers to be affected by redundancy and the re-engagement of workers. The Recommendation provides that effect may be given to its provisions through national laws or regulations, collective agreements, works rules, arbitration awards, or court decisions, or in such other manner consistent with national practice as may be appropriate under national conditions. The Government announced in a White Paper in December 1964 (Cmnd. 2548) that they considered that the application of the principles embodied in the Recommendation could play a useful part in promoting a sense of security at work, that this was in the interests both of workpeople and of the efficiency of the economy, and that subject to certain reservations they accepted the Recommendation.

5 In accordance with our terms of reference, we began by collecting information about dismissal procedures. Our main sources of information are described in Parts I and II. We went on to consider what procedures would give satisfactory protection against arbitrary dismissal. In the course of our examination of this question we discussed different forms of protection in this and other countries with Professor Otto Kahn-Freund*, and we also discussed the position in this country with Miss Joan Woodward†; we are greatly indebted to both for the papers they submitted and for the very valuable help they gave us. Besides information supplied by the organisations represented on the committee, we also had the benefit of reading a summary of Mr. M. D. Plumridge's‡ research study "Disciplinary Practices in Industry".

6 In our report we first consider the present extent of protection against arbitratory dismissal in Great Britain (Part I) and compare this with the situation in other countries (Part II). We then examine the need for improved and extended procedures and their value, which type are most suitable to the U.K., and how their development can best be promoted (Part III). We summarise our report and set out our conclusions in Part IV.

* Professor of Comparative Law in the University of Oxford.

† Reader in Industrial Sociology, Imperial College of Science and Technology.

‡ Tutor and Field Worker, Roffey Park Institute.

I. Dismissals and Dismissal Procedures: The Present Position

Size of the problem

7 In Great Britian there are probably upwards of 10 million terminations of employment each year. (The number of employees involved in terminations is of course much smaller, as some—e.g. casual workers—change jobs many times within a year.) The great majority of terminations are caused by the employee leaving voluntarily. Exact figures are not available, but at a rough estimate there are probably about three million dismissals every year. We discuss this figure further, and the efforts that can be made to analyse it according to cause of dismissal, in Appendix 1, where we conclude that the following very rough estimates may be made of the number of dismissals a year attributable to each of the main reasons for dismissal:

Reason for dismissal	*Estimated number of dismissals per year*
Redundancy	750,000–1,000,000
Misconduct	333,000–500,000
Sickness (including those later re-engaged)	Nearly 1,000,000
Involuntary retirement	50,000–100,000
Unsuitability, etc.	500,000–750,000

Disputes over dismissal

8 Another factor relevant to the importance of this problem is the incidence of disputes over dismissal. The following are the yearly averages, for the three years 1964–66, of the statistics of stoppages of work reported to the Ministry of Labour as arising from dismissals in circumstances other than redundancy (which we exclude because it raises different issues from those raised by individual dismissals). The figures in brackets refer to stoppages of work due to industrial disputes arising from *all* causes.

Annual average number of stoppages beginning in the period	211 (2,272)
Annual average number of workers *directly* involved in these stoppages	41,200 (596,000)
Annual average number of working days lost by *all* workers involved (whether directly or indirectly) in these stoppages	194,000 (2,533,000)

Stoppages arising from these dismissals therefore represented about 9 per cent of all stoppages and the time lost about 8 per cent of the total.

(96319) A*3

9 Appendix 2 gives a more detailed analysis, according to the reason for dismissal, of stoppages of work due to disputes arising out of dismissals in circumstances other than redundancy in the years 1964–66; stoppages following dismissals because of trade union activities are excluded. Lack of detailed information about some of the disputes results in a fairly high number being classified as "cause not known".

10 Appendix 3, covering the same three years, distinguishes stoppages known to be due to dismissal because of trade union activities. These are very few; they represent some 4 per cent of all stoppages due to dismissal in circumstances other than redundancy and account for about 8 per cent of the days lost for those reasons. Some disputes over dismissal due to trade union activities may not have been identified as such due to lack of detailed information, but since Press reports tend to give prominence to disputes arising from dismissals, particularly where shop stewards, etc., are involved, omissions are probably few.

Legal safeguards

11 What safeguards has the employee against arbitrary or unjustified dismissal? The law regards employer and employee as equal parties to the contract of employment. Either may terminate it after due notice for any reason, or without any reason. If either fails to observe the terms of the contract—e.g. by failure to give due notice—the other party may sue for breach of contract. The Contracts of Employment Act 1963 gave employers and employees generally minimum rights to notice. But the Act does not affect the right of either party to the contract of employment to terminate it without notice if the behaviour of the other party justifies this. Many of the dismissal actions coming before the courts are cases where an employee who has been summarily dismissed—e.g. for serious misconduct—contends that this summary dismissal was wrongful. If upheld, he may be awarded damages for any loss he has suffered through the employer's not having given him the notice to which he was entitled. But an employee cannot obtain damages for having been dismissed unfairly or without good reason, provided there has been no breach of contract.

12 Nor will the courts award reinstatement to an employee who has been wrongfully dismissed. There are two types of legal remedy for breach of contract. The first is the remedy of damages; the second consists of the discretionary remedies of specific performance and injunction. It is the latter which would be sought by an employee who wanted reinstatement after being wrongfully dismissed. But at the end of the nineteenth century the courts decided in a series of cases that they would so exercise their discretion as regards these remedies as not to grant specific performance of a contract for personal work or service. One reason seems to have been that they felt that it would be impossible to supervise the enforcement of an order for specific performance of such a contract. Moreover, they were reluctant to enforce the continuation of a contract which involved a personal relationship between the two parties and were anxious to protect workers from being obliged to remain in the employment of a particular master. For example, in *De Francesco v. Barnum* (1890), Lord Justice Fry said on this point "I think the Courts are bound to be jealous, lest they should turn contracts of service into contracts of slavery". This was the background of the decision in *Rex v. National Arbitration Tribunal ex parte Crowther* (1948), when it was held that the National Arbitration Tribunal had no jurisdiction to make

an award directing the reinstatement of certain workers. In some recent cases the courts have declared that a dismissal was invalid, but these are exceptions to the general rule, either because they do not deal generally with the ordinary relationship of master and servant or because of other special circumstances. For example, in *Ridge v. Baldwin* (1964) the court made a declaration that because, *inter alia*, the rules of natural justice had not been observed, the dismissal of a chief constable was null and void. But the case did not deal with the relationship of master and servant, because the chief constable was not the servant of the watch committee or anyone else; he was the holder of an office. In other cases where the courts have concluded that they were dealing with the ordinary relationship of master and servant, they have seen no reason to depart from the general rule.

13 The law therefore offers little protection to the worker against arbitrary dismissal, as opposed to dismissal without due notice. Nor is there any legal requirement that the employer should give a reason for dismissal. In this respect, however, it may be noted that the Redundancy Payments Act now provides that in any dispute before an Industrial Tribunal about the cause of dismissal, the onus of proof is on the employer to establish that the reason was *not* redundancy, and to that extent encourages employers to give workers the reason for dismissal where this is other than redundancy.

Dismissal procedures

14 In practice, however, the security of employment which many workers enjoy extends far beyond their legal rights. In many fields, particularly among white collar workers, it is the recognised practice that an established employee is not dismissed except for serious misconduct or where economic circumstances make it unavoidable. Moreover, workers who consider the dismissal of a colleague unfair may protest against it through collective action. These safeguards have gained much strength in the post-war years from the generally high level of employment, which has given employers every incentive to refrain from arbitrary dismissal.

15 In many cases procedures which can deal with dismissal questions have been set up, often after consultation between employers and their workpeople. The general aim is to ensure that the decision to dismiss is not taken without proper consideration and that a worker who considers his dismissal unjust has some form of appeal against it. There are two main types of procedures in Great Britain—procedures within the firm (which we refer to as internal procedures) and procedures for external appeal against the decision reached within the firm (which we refer to as external procedures). Many external procedures are industry-wide. We also distinguish procedures in the private sector from those in the public sector, as the latter have many common features and in many cases have affinities with both internal and external procedure.

(A) Internal procedures in the private sector

16 It is natural that a worker who feels he has been unjustly dismissed should first try to obtain redress within the firm, whether by approaching his trade union or by taking the matter up himself with management at a higher level. Many external disputes procedures have as their first stage efforts to settle the matter within the establishment. Probably, too, almost all firms would say their workers had the right of appeal to higher management; it is often said that

"the managing director's door is always open". But unless this right forms part of a definite and known dismissal procedure, it often means little in practice; workers do not in fact appeal to higher management because they do not know they have the right to, or are diffident about exercising it. Moreover, unless some guide-lines have been laid down as to what sort of offences warrant dismissal, the higher level manager may feel obliged to support his subordinate's decision whatever the merits of the case, and if so workers will see no point in appealing. There are, therefore, considerable advantages in a formal procedure, known to all those concerned—management and workers alike—and consistently applied; this can also act as a deterrent against over-hasty action by lower management.

Extent

17 No general information is available as to how many firms operate formal procedures. We made the following three enquiries in an attempt to shed light on this:

(1) Ministry of Labour Industrial Relations Officers (I.R.O.s) collected information about formal procedures during their normal advisory visits to firms in the second half of 1965. (Firms visited by I.R.O.s will not include many small firms and may tend to include an above-average number of firms interested in good personnel practices.)

(2) The Ministry made separate enquiries of 53 firms believed to maintain good personnel records (and who have also possibly given more than average attention to dismissal procedures). Thirty-eight of these replied.

(3) The Engineering Employers' Federation (E.E.F.) obtained information from 45 engineering firms in eight member associations in London, the Midlands, the West Country, Yorkshire and Scotland. The sample consisted mainly of large firms, however, and was therefore not representative of the industry which includes many small firms; and it, too, probably covered a higher than average proportion of firms interested in good personnel practices.

18 As will be clear, the three enquiries were by no means exhaustive and the samples were small. The results were as follows:

TABLE 1

Sample	Firms of all sizes			Firms with 1,000 or more employees		
	No. in sample	Firms with formal procedures		No. in sample	Firms with formal procedures	
		No.	%		No.	%
(1) Firms visited by Ministry I.R.Os (5 regions)	373	64	17	(Not known)	27	(Not known)
(2) Firms covered by Ministry's written enquiry . . .	38	21	55	26	18	69
(3) Engineering firms (members of E.E.F.)	45	33	73	40	33	83

Note: Some firms were said to have "informal arrangements" but in many cases there was doubt about how far these were generally known and consistently applied and they have therefore been excluded.

19 The results or enquiry (1), based on the largest and probably most representative of the three samples, suggest that formal procedures are the exception rather than the rule; and this was supported by what I.R.O.s found in other visits which are not included in the figures above. On this evidence it is probable that the proportion of all firms which have formal procedures is well below 20 per cent.

20 The general impression that procedures are found mainly in larger firms (i.e. those employing 1,000 or more) is certainly borne out by the results of enquiries (2) and (3). It appears, therefore, that procedures are comparatively rare among firms employing under 1,000—the vast majority—but exist in quite a lot of firms employing over 1,000, and further analysis showed that they are found in many of those firms employing over 2,000. Indeed it may be that they exist in a majority of those firms employing over 1,000 which pay attention to good personnel practices.

Scope

21 Many of the procedures covered by the samples were designed basically to deal with dismissals for disciplinary reasons, and in a few cases their scope was restricted to particular types of discipline, such as bad time-keeping or persistent absenteeism. In many cases, however, the same procedures would no doubt also be used for dismissals due to inefficiency.

Content

22 These enquiries produced a good deal of information about the types of procedure operated by the firms covered. Their main features are described in the paragraphs which follow.

23 *Opportunity for worker to state his case.* Comparatively few of the procedures covered specifically provide that the worker should have the opportunity to state his side of the case to a representative of management before any decision is taken (though we have little doubt that this is general practice). Where this is provided for, the worker sometimes has the right to be accompanied by a trade union representative.

24 *Part played by trade union.* Some of the procedures covered provide for consultation with trade union representative before any decision is taken to dismiss. (It appears fairly common for management in firms with no formal procedure to talk to shop stewards about proposed dismissals.) If agreement is not reached, the matter may be referred to a higher level of management. About half of the engineering firms in the E.E.F's enquiry who had formal procedures stated that the workplace representative was allowed to be present at certain interviews or to make representations on behalf of the employee before a decision was made. There are also a few procedures where management and workers' representatives hear the case jointly, the ultimate decision, however, being taken by management; and as we mention in paragraph 27, we found three or four examples of joint decision.

25 *Who can dismiss?* It was found that in the firms covered by our enquiries it is comparatively rare for the foreman to have the power to dismiss. In some cases this has been transferred to the personnel department, in an effort to ensure that all relevant facts, including the way similar cases have been dealt

with in the past, are taken into account. Today, however, many of those concerned with industrial relations stress the importance of preserving line managers' authority by letting the final decision rest with them. Some firms, therefore, have procedures in which the worker's immediate supervisor has the power to recommend dismissal, the personnel department has the duty of assessing the facts and interpreting policy on dismissal, and the decision is taken by a higher level of line management (e.g. the works manager).

26 The great majority of procedures covered by our enquiries provided for the decision on dismissal to be taken at a higher level than the immediate supervisor. (An exception may be made, however, for cases of misconduct, and the immediate supervisor may be allowed to impose precautionary suspension.) In some firms the immediate supervisor must consult a more senior member of line management and/or the personnel department before a decision is made; in others only higher levels of management were authorised to dismiss, sometimes after consultation with and investigation by the personnel manager; and in others the personnel manager was responsible for dismissal, usually after informing the trade union representative.

27 There were three or four examples of firms where we found that the decision whether or not to dismiss is a joint one by management and union representatives, either a specially convened group or a standing sub-committee of the works council. There was evidence that the dual role which union representatives have to play in such a procedure can cause difficulties.

28 *Appeals.* Most of the procedures covered provide an opportunity for a dismissed worker to appeal against the decision. Appeals are usually to be made to a higher level of management or to a personnel manager. In some cases, particularly in engineering, appeals are expected to be made through the industry's disputes procedures. Sometimes the worker can appeal against warnings as well as against dismissal. Many firms with procedures providing for appeals stated that appeals were rare.

29 By way of illustration, we reproduce some examples of firms' internal procedures in Appendix 4.

30 Certain other points of interest may be noted:

(*a*) *Listing offences and penalties.* Practice varies as to whether lists of offences and penalties should be drawn up and made known to workers. Many firms consider that because this may remove the element of flexibility which is essential in any disciplinary system, and because it is impossible to compile an exhaustive list, the disadvantages outweigh the advantages. Some firms, however, do include in their works rules or workers' handbooks details, or at least examples, of penalties which may be incurred, but these are usually linked with particular offences only in the cases of bad timekeeping and absenteeism; this was commoner among the firms in engineering covered by the E.E.F's enquiry than among the firms covered by our other enquiries.

(*b*) *Warnings.* A number of firms have a system of warnings. Usually the first warning is given by the immediate supervisor. If a further warning is necessary it may be given from a higher level of management (e.g. the departmental head), either in writing or verbally with the supervisor

present; a record of this warning is usually made but may be reviewed and expunged after a certain period (e.g. three months) if there has been improvement. The trade union representative may be informed at this stage. Failure to improve may be followed by a final warning or by suspension or dismissal.

(*c*) *Disciplinary suspension.* In a number of firms disciplinary suspension without pay is used as a penalty less serious than dismissal but more so than a warning or reprimand. Mr. M. D. Plumridge in his research study* found this in 29 of the 50 firms who completed his questionnaire; in some it was used frequently, in others only occasionally. In 20 the maximum was three days' suspension, but in others suspensions of 10–14 days had been imposed and there were isolated examples of three and four weeks' suspension. Within trade unions Mr. Plumridge found differing attitudes towards this penalty, but not one shop steward in factories which used suspension wished to do away with it. It must be noted, however, that this penalty can only be used by management where the worker's contract of employment allows this, as was decided in the case of *Hanley v. Pease* (1915); in the case of manual workers this might be established by an express term in the contract, but in the absence of this it might depend on whether suspension is in accordance with custom and practice in the trade or establishment concerned—something which may not be easy to prove in a court of law, as was shown in *Marshall v. English Electric* (1945).

(*d*) *Suspension pending a decision.* A smaller number of firms practise precautionary suspension—i.e. if there is doubt about the facts of a case of (for example) alleged misconduct, the employee is suspended, with or without pay, until the case has been investigated and a decision reached. This is of course something quite different from disciplinary suspension.

Preventive effect

31 Our enquiries produced some evidence that in firms with formal internal procedures, dismissals are in fact relatively infrequent. Thirty-three of the firms covered by enquiry (2) in paragraph 17, employing in all 123,000 workpeople, were able to give us figures for the number of and reasons for terminations among their employees during 1965. The following table sets out the results.

TABLE 2

	Voluntary leaving (1)	Redundancy (2)	Sickness (3)	Unsuitability (4)	Misconduct (including absenteeism and bad timekeeping) (5)	Total of cols. (3), (4) and (5) (6)	Grand Total of cols. (1)–(5) (7)
No. of terminations . .	36,580	2,034	237	930	1,458	2,625	41,239
Percentage of all terminations .	88·7	4·9	0·6	2·3	3·5	6·4	100

Note: Deaths, and retirements (whether voluntary or otherwise) at or above the firm's normal retirement age, are excluded.

* See paragraph 5.

As this shows, the vast majority of all terminations in these firms were due to voluntary leaving. We were, however, able to analyse separately the figures of dismissals in firms with and without formal internal procedures. In 19 firms with formal dismissal procedures, employing some 73,000 workers, total dismissals (excluding redundancy) amounted in 1965 to only 2 per cent of the labour force. Dismissals for misconduct, including absenteeism and bad timekeeping, were 1 per cent. The corresponding figures for 14 firms (52,000 workers) which had no such procedure were 4 per cent and 1.3 per cent. The figures are too fragmentary to support a firm conclusion and other factors such as trade union strength could have an important bearing on them, but they do suggest that in firms with formal procedures fewer dismissals take place.

(B) Procedures in the public sector

32 The public sector is distinguished by the fact that (apart from the local authorities) it consists largely of single-employer industries (such as the National Coal Board or the Civil Service) or very major enterprises within an industry (such as the nationalised airways corporations). In practice, therefore, dismissal procedures in this sector form something of a half-way house between procedures within the firm and industry-wide procedures.

Nationalised industries

33 We obtained details of their procedures from the National Coal Board, British Railways, the Electricity Council* and the Gas Council (each of whom sent us the procedures of certain of their Area Boards), British European Airways* and the British Overseas Airways Corporation, London Transport and British Road Services. These procedures show a considerable amount of common ground. The United Kingdom Atomic Energy Authority also sent us information about their dismissal procedure, but this follows the lines of Civil Service practice (see paragraphs 53–58).

34 *Warnings.* London Transport's procedure covering railway workshop wages staff provides for a graded system of penalties for bad timekeeping and absence without reasonable excuse. An employee who is persistently late or absent receives on the first occasion, a caution from his foreman; on the second occasion, a severe caution from a senior official; and on the third occasion a final caution. If he defaults after the final caution he will be discharged. All penalties are, however, subject to appeal. A final caution is disregarded if the employee has a clear timekeeping record in the ensuing 12 months, but if his timekeeping lapses subsequently he receives a second final caution, which stands permanently. In B.R.S. the least serious penalty—written warning—is entered on the employee's record but is expunged after a further year's service without warning or punishment. In the N.C.B. dismissal is the last resort and is applied only after warnings and other measures have failed to have effect, for breaches of the Mines and Quarries Act, or for serious misconduct.

35 *Notifying the employee.* The B.E.A. and B.R.S. procedures specify that when disciplinary action is being considered the employee must be informed in writing of the alleged offence and have the opportunity to make representations,

* Both the Electricity Council and B.E.A. are at present revising their procedures.

either in writing or at a disciplinary hearing. The N.C.B. procedure for non-industrial staff stipulates that the individual will be informed of the grounds on which the proposed measures are based and given the opportunity to make representations. In British Railways an employee who is charged with misconduct, neglect of duty or other breach of discipline is informed in writing of the nature of his offence and is invited to defend his conduct in writing or in person before an officer of the Board. He is told in writing of the decision and can appeal against any punishment to the appropriate superior officer.

36 *Level of authority for dismissal.* In general, power to dismiss lies at high level. In B.R.S. it is subject to the agreement of the managing director of the company or his nominated deputy. In B.E.A., dismissal is generally decided by staff of manager status (i.e. in salary range £2,500–£3,000) but authority is delegated in some instances to assistant manager or superintendent (range from £1,750 upwards). In the case of N.C.B. non-industrial staff dismissal must be agreed by at least two persons senior to the individual concerned. Practice in the Electricity Boards varies—one at least appears to have no formal procedures—but dismissal of staff employees is in fact decided at fairly high level.

37 Authority for dismissal of industrial or manual employees generally lies at lower level. The intention generally seems to be to delegate authority as far as possible to local management, who at their discretion can consult district or head office.

38 *Role of personnel officers.* Generally the right to dismiss lies with line management, subject in some procedures to prior consultation with specialised personnel staff. In the Gas Boards the decision is taken jointly by line management and personnel staff, and indeed in one instance—covering manual employees—by personnel staff alone. B.O.A.C., however, require line management to consult the personnel manager who, if he feels that termination or other penalty is unduly harsh, may insist that the case should be referred upwards, if necessary to the departmental head (though the final decision still rests with line management in the department concerned). The participation of personnel departments seems mainly intended to try to ensure greater uniformity of penalty but in some cases they act as the link with trade unions.

39 *Types of penalty.* B.R.S. instructions set out the range of disciplinary penalties—from written warning to dismissal—and the level at which each penalty may be awarded. They differentiate between "serious offences" (suspension without pay) and "major offences" (stiffer penalties) but do not categorise their nature. In its major penalties B.R.S. also distinguishes between dismissal (employee debarred from re-employment with any B.R.S. company) and "removal from service" (employee not so debarred).

40 *Summary dismissal.* Most of the procedures and instructions speak of the gravity of dismissal as a penalty. Summary dismissal is however recognised (if not specified in written agreements) as the appropriate penalty in given circumstances. N.C.B. employees can be summarily dismissed for breaches of the Mines and Quarries Act and for other acts of serious misconduct in connection with their employment. B.E.A's regulations provide for summary dismissal; examples of misconduct making staff liable to this include smuggling, violence and clocking offences, but even in such cases the full procedure is normally used. The civil air transport national agreements covering certain air and ground staff

also include clauses providing for summary dismissal or suspension without pay for specified conduct, e.g. incapacity through drink or drugs, and disobedience or misconduct prejudicial to the interest of the employer. On the other hand B.R.S. do not dismiss summarily for any offence, however grave.

41 *Suspension.* Most procedures provide for suspension where appropriate. B.R.S. stipulate, however, that immediate precautionary suspension will be used only where the alleged offence is inconsistent with continuance of work.

42 *Right of appeal.* Virtually all employees in the nationalised industries can appeal formally against disciplinary dismissal to higher levels of management: the exception is coal-mining workers dismissed for breaches of the Mines and Quarries Act, who are excluded from lodging formal appeals. (One Electricity Board has no formal method of appeal but it appears that it will consider representations.) The only provision for appeal to an independent person occurs in the case of manual workers in coal-mining; where the union contends that a dismissal is wrongful or unreasonable and the case is not settled through the conciliation machinery at pit level, it is referred direct to an independent umpire (chosen from a panel of umpires appointed by the district conciliation board), whose decision is final and who can recommend reinstatement. But it appears that in practice dismissal cases seldom or never go to umpires. Until 1960 the final appeal in civil air transport lay to a joint body, but this was terminated by the trade union side when the employers' side refused to accept the union's request that the joint body's findings should be binding rather than advisory. One Gas Board has no formal procedure for appeals. However, it usually considers allegations of misconduct at a "hearing", which the employee and his representative may attend, and in the event of dismissal representations can be made. The personnel manager would then either convene a further hearing, if the facts were in dispute, or reconsider the penalty and discuss it with the trade union official if its severity was disputed. Trade union representation at all stages is encouraged.

43 *Stages in appeals.* Most of the procedures provide for more than one stage of appeal. The airways' three-stage processes end at the level of deputy chairman (B.O.A.C.) and chief executive or two board members appointed by the chairman (B.E.A.), in each case with advice from the personnel director. B.R.S. provides for appeal to the next higher level of authority and finally to the managing director or chief officer (though generally this final appeal is used only where a question of principle is involved). In the N.C.B. non-industrial staff can appeal to a level above that at which the decision to dismiss was taken.

44 In London Transport minor offences, e.g. those calling only for a verbal caution, are handled informally. Where conduct may require stronger action a disciplinary hearing is held which is conducted by a senior management representative or, in some departments, a disciplinary board composed of two or more senior management representatives. An employee may appeal to higher management against any penalty imposed at the disciplinary hearing. Appeals are normally held before the head of the department.

45 In British Railways the appeal procedure does not apply to cases of exceptionally grave misconduct justifying summary action by management. Any appeal in this sort of case is subject to the agreement of the employee's trade union (provided it is recognised for negotiating purposes) that the use of

the appeal procedure is justified. This right of veto on the part of the union was introduced after a union took exception to the hearing of a particular appeal against summary dismissal for exceptionally grave misconduct where the appellant did not have the support of the headquarters of his trade union. The view then taken by management was that "it was undesirable to undermine union support for the maintenance of discipline in the matter of appeals". Generally, however, unions seldom refuse to support an appeal and the procedures work satisfactorily.

46 *Time limits.* Most procedures specify time limits for employees' appeals against dismissal—seven days (N.C.B.—manual—first stage of appeal, and B.E.A.); ten days (B.R.S.); and 28 days (B.O.A.C.). The only such limit on management that is mentioned is the requirement in the B.R.S. procedure that wherever practicable a disciplinary hearing should take place within 48 hours of the report of the alleged offence.

47 *Trade union representation.* Trade union representation is allowed at all stages. Under the B.O.A.C. procedure the representative must belong to a union in membership of the National Joint Council, but the employee can be accompanied by any fellow employee. Similarly in London Transport a worker appearing on a disciplinary charge has the right to be accompanied by a spokesman who may be a union official or a fellow worker.

48 *Criminal proceedings.* B.E.A.'s instructions state that in the event of prosecution any decision against the employee in criminal proceedings will be without prejudice to his right of appeal under disciplinary procedures.

Local authorities

49 We asked a representative sample of local authorities for information about their dismissal procedures. The replies received show that almost all local authorities have adopted the dismissal procedures recommended by the appropriate National Joint Council for Local Authorities' Staffs, manual or non-manual as the case may be. Some authorities operate modified versions of the recommended procedures but those modifications did not alter the general picture.

50 *Administrative, professional, technical and clerical staff.* Both in England and Wales and in Scotland recommended procedures provide for administrative, professional, technical and clerical employees to make representations, either individually or through a trade union or staff association, to an appeals committee of the authority. The procedure for Scotland speaks of an officer who "has been dismissed, suspended or reduced in grade" being able to make application in writing "to be heard by a special appeals committee". In England and Wales the procedure is open to an officer whom "it is proposed by an appropriate committee . . . to relegate or dismiss". In practice, however, the difference is probably not great. Both in England and Wales and in Scotland the appellant has the right of appearing before the appeals committee. The procedure for England and Wales also states that the officer concerned may be accompanied by a union or association representative, if he wishes. It is understood that the recommendation of the appeals committee is invariably accepted by the full authority or employing committee concerned.

51 *Manual employees.* In England and Wales the recommended procedure provides for a manual employee to make representations at two stages—to the committee which is considering the question of dismissal and, on appeal, to an *ad hoc* committee of the authority. He has the right to be represented by his union in both cases. Redundancies and dismissal for unsuitability within six months of the start of employment are excluded. The same procedure is recommended for an employee who is suspended—e.g. during enquiries—with the proviso that he should receive half pay, which is not recoverable by the authority if he is finally dismissed. Even in summary dismissal for misconduct it is recommended that the employee should have the same rights of representation to and appearance before these committees. In Scotland an employee with at least one year's service who has been dismissed, downgraded or suspended may appeal in person or through his union representative to the local authority.

52 All four procedures differ from those found in other fields of employment in that the original proposal to dismiss, and any resultant appeal, are considered by bodies composed of elected representatives (e.g. councillors)—in the first place generally by the appropriate committee (e.g. the Watch Committee), and in the second by an appeals committee which is usually specially constituted. Although the ultimate right to engage and dismiss local government staff rests with the authority itself—i.e. the elected representatives—their intervention in day-to-day staffing matters is probably slight and the individual may therefore feel that they will consider dismissal questions with greater detachment than would senior staff alone.

Civil Service

53 In the Home Civil Service procedures for dealing with disciplinary cases have been agreed between the two sides of the Civil Service National Whitley Council. When a serious charge, other than one which gives rise to criminal proceedings, is brought against an officer the following procedure is adopted:

(*a*) the officer is given a written statement defining the charge and setting out the facts in support of it;

(*b*) he is required to submit a written reply, but where there is a conflict of evidence between the charge and his written reply, he has the right to represent his case orally before a suitable officer in the department other than his immediate superior;

(*c*) in representing his case orally, he may have the assistance of a friend or colleague (who may be a union representative) present with him.

54 Where the offence is against good order and discipline and the facts are not in dispute the necessary investigation is carried out by the appropriate departmental unit, but in more complex cases or where there is a conflict of evidence the department may set up a small board to advise the head of department. In cases of exceptional difficulty or importance where either the service as a whole is brought into disrepute or more than one department is involved, the alleged offender is a higher grade officer, or it is important to forestall any suspicion that the department might fail to deal adequately with the offender, it may be necessary for a formal board of enquiry (which may include representatives from other departments or of people outside the civil service) to be appointed by the Minister. The function of the board is confined to ascertaining

facts and although it can recommend disciplinary action, the final decision is taken by the Minister (with the approval of the Prime Minister where necessary). The offender is not normally allowed legal representation since the board is not exercising a legal function, but simply ascertaining facts, and should not be conducted with undue formality.

55 *Trade unions.* The trade unions may make representations on procedural matters and on general principles underlying disciplinary action but they are not entitled to discuss or negotiate individual cases (although they may accompany an officer when he presents his case orally), since discipline is a managerial function and not a negotiable condition of service.

56 The bulk of the cases to which the disciplinary procedures apply concern offences connected with an officer's duties, or offences in private life which may reflect on the officer's suitability for employment in a particular post or in some cases in the Civil Service as a whole. The other type of case is one where the officer has been or may be charged with a criminal offence. Where an officer commits an offence in connection with official duty which may lead to a criminal charge, the department refers the matter immediately to the Director of Public Prosecutions. Normally disciplinary action is postponed until the verdict of the court is known in order to avoid any appearance of pre-judging the case. Sometimes, however, action (including dismissal) may be taken before the prosecution, either where the offender admits his guilt or, even if he denies criminal intent, where carelessness or an irregularity is apparent.

57 *Penalties.* The treatment of offences which are not criminal depends on the circumstances of the particular case in relation to the department concerned. The officer's record is taken into account and frequent repetition of a minor offence could become a serious matter and result in a heavier penalty. Generally, the higher the grade of the offender the higher is the standard expected although certain serious offences are treated with uniform severity whatever the grade of the offender. Disciplinary penalties commonly used are:

(*a*) Formal reprimand.

(*b*) Stoppage of future increment or forfeiture of an increment or increments already earned.

(*c*) Monetary penalties, either by way of fine or by way of restitution (in whole or in part) of loss or damage caused by the offender.

(*d*) Disciplinary transfer to another locality, in which case the offender may be required to meet his own removal expenses.

(*e*) Suspension with loss of pay.

(*f*) Down-grading, including removal from a post attracting additional pay or allowances.

(*g*) Retirement with an abated pension.

(*h*) Dismissal without pension or gratuity.

Any penalty incurred is noted on an officer's record and may affect his promotion prospects. In some departments a penalty automatically excludes the offender from consideration for promotion for a fixed period.

58 *Suspension.* Where action is postponed while a prosecution is pending or while enquiries into an offence are being made an officer may be suspended from

duty. This is only imposed where a serious charge is supported by strong *prima facie* evidence, or when such a course is thought desirable in the public interest. During the suspension the head of the department has discretion to withhold in full or in part the officer's remuneration, and on termination of the suspension, whether by dismissal or reinstatement, he will decide after consideration of all the circumstances whether it shall be forfeited wholly or in part. It is always borne in mind that prolonged suspension without pay may result in grave hardship to dependants and, where this is established, interim payments of salary may be made at the discretion of the department. Where a loss to public funds has occurred, any interim payments or monies otherwise due are, on dismissal, withheld to offset the loss.

Number of dismissals in the public sector

59 Throughout the public sector we found evidence that the number of dismissals is generally very low. (Similarly, in practice there are generally very few appeals against dismissal and only a minority are successful.) This is of course largely due to the security of employment which is an established feature of many types of public employment. But this is not true of all types and we think the wide spread of formal procedures is also relevant to the small number of dismissals. We regard this as a further indication of the salutary effects of formal procedures in preventing arbitrary dismissal.

(C) External procedures in the private sector

60 *Consideration under disputes procedure.* In most industries the trade unions and employers' organisations have agreed on procedures for the avoidance of disputes. They generally provide for any question raised by either side to be discussed jointly at different levels; a common pattern is for matters which cannot be settled within the firm between the management and trade union concerned to be referred to local or regional joint committees of representatives of trade unions and employers and, if not settled there, to a national joint committee of similar constitution. A few have arbitration as a final stage, but most confine themselves to recommendations to the parties concerned.

61 The Confederation of British Industry obtained information from 34 of its member employers' associations in the private sector about the dismissal procedures in their industries. The replies showed the following main features.

62 Almost all regarded the industry's disputes procedure as the appropriate machinery for handling dismissal questions. Even where the procedure's terms of reference did not formally cover dismissals, it was felt that it could and would be used informally if a problem arose over a dismissal. Sometimes, however, procedures can deal only with certain types of dismissal case—e.g. where notice has not yet expired.

63 Dismissal cases generally form a small proportion of all disputes handled under procedures, particularly at national level. Often those dealt with are mainly cases of dismissal of trade union representatives. In a number of industries dismissal cases were virtually unknown at stages of procedure external to the firm (where the first stage of an external procedure is discussion between managerial and trade union representatives within the firm, little information about dismissals dealt with at that stage was available). In engineering in 1966,

however, 155 dismissal cases were considered at works conference level under the procedure agreements (out of a total of 5,273 cases of all kinds considered at works conferences) and a definite settlement was reached in 79 or 51 per cent. Of the rest of those 155 cases, 47 were heard at local conferences (out of a total of 1,725) and 17 or 36 per cent definitely settled; 14 were heard at central conference (out of a total of 973) of which 5 or 36 per cent were definitely settled. In addition, 59 dismissal cases were dealt with informally (out of a total of some 2,000 cases dealt with in this way) and 32 or 54 per cent definitely settled. In building, to take another example, of the total of 127 cases dealt with in 1965 by the joint machinery at regional level and 26 at national level, 68 and 12 respectively arose in one way or another from dismissals; and in civil engineering the national conciliation board heard 20 dismissals cases out of a total of 57 cases in the 35 months April 1964–February 1967. Even in these industries, however, the number of cases handled must be a minute proportion of all dismissals. The individual cannot, of course, himself take his case through the disputes procedure; that can only be done by a trade union which is party to the procedure.

64 Organisations reported that awards resulting from these voluntary disputes procedure were almost invariably observed. There is, of course, a proportion of cases in which the two sides fail to reach agreement through the procedure; equally, however, some cases where failure to agree is recorded at a lower level are not taken further in the procedure, and in these the discussion under the procedure, or subsequent action by the employer, may have contributed to a settlement.

65 Not infrequently reinstatement is awarded. In building, for example, in 1965 reinstatement was recommended in 15 of the 69 cases dealt with at regional level and 3 of the 12 cases dealt with at national level. "Reinstatement" in the full sense means re-employment without any loss of rights or status, and may be distinguished from "re-engagement", which may be at a different level of work or without preservation of seniority rights (other than any preserved by statute) and other rights and privileges. Re-engagement sometimes results from consideration under an external procedure in cases where the worker is found to have been at fault but not seriously enough to warrant dismissal. In this report, in the interests of simplicity, we use "reinstatement" to cover re-engagement as well as full reinstatement.

66 *Speed.* We were able to obtain little general information about the time taken by external procedures to deal with dismissal cases. From the limited information available, it seems clear that there are wide variations in this. Much depends, of course, on the circumstances of the case and, more particularly, whether it is disposed of at the lower stages of the procedure or goes to national level. One employers' federation told us that of the three cases their procedure had dealt with in the six years 1961–66 (one involving 38 men), one was at national level, one after representations had been made by the union at national level, and one went to arbitration; in each case the period between the date of dismissal and the final settlement was 6–8 weeks. Another said that cases discussed at national level in their industry were dealt with by a conciliation board which met once a month, so that it was unlikely, once a claim for a hearing had been received, that more than a month would elapse before a decision was given and it would usually be less. A third supplied figures showing that the

(96319) A**2

three cases dealt with by their procedure at national level in the four years 1962–65 took, on average, nearly six months from the date of dismissal to reach the stage of discussion by the national body—at which, on each occasion, failure to agree was recorded; one case where the dismissal occurred on 30th January 1962 did not reach national level until 17th January 1963. (Such delays, of course, do not necessarily arise from failings in the procedure itself; they may arise from failings in the parties to it.)

67 *Special industry-wide dismissal procedures.* In the very few cases where special dismissal procedures, separate from general disputes procedures, have been adopted by industries in the private sector, the main feature is usually some form of appeal to management within the firm by a dismissed worker or his trade union. For example, in the chemical industry an agreement gives the worker or his trade union a right of appeal to management against summary dismissal or suspension; if the appeal succeeds the worker receives payment for any time lost. An agreement in flat glass manufacturing bars dismissal except with the knowledge and approval of the works manager and provides that except in cases of emergency (e.g. gross misconduct) one week's prior notice of pending dismissal should be given but no formal notices of dismissal should be issued until the shop steward has been informed and any representations he wishes to make considered, and, if dissatisfaction remains, until the trade union branch secretary has discussed the matter with the works manager. Naturally, however, these agreements do not lay down procedures in such detail as those of individual firms.

68 *Docks.* One special case is that of the docks. Under the present statutory dock labour scheme, recruitment to the register of dock workers is done by the local boards of the National Dock Labour Board. The local boards (which include representatives of employers and trade unions) allocate registered workers to registered employers as required; when not allocated the workers form part of a reserve pool and draw fall-back pay. The true equivalent of dismissal in these circumstances is dismissal from the industry (i.e. removal from the register), not dismissal by a particular employer. Removal from the register requires a decision by the local board and the worker may appeal to a tribunal which includes representatives of both sides and sometimes has an independent chairman. During the three years ended November 1966, on average local boards took disciplinary action in 4,390 cases a year and decided on dismissal in 765 (17.4 per cent); the number of appeals against dismissal is not known, but on average 214 dismissed workers a year (28 per cent) were reinstated. The dock labour scheme is at present being revised to adapt it to a system in which dockers will be permanent employees of a particular port employer. It is envisaged that the permanent employer will have the right to terminate a worker's contract with him, with the consent of the local board, but that removal from the register will remain the prerogative of the local board; in both cases the worker will have the right of appeal.

(D) Sectors which lack external procedures

69 We have described the internal and external procedures which operate in the private and public sectors. There remain some industries which have not developed disputes procedures and which are composed largely of small firms (whereas internal procedures are found mainly in the larger firms). Often the

reason why external procedures have not been developed in such cases is the low level of organisation among both workers and employers—which is again connected with the predominance of small firms in these industries. It seems *prima facie* probable that it is in these less highly organised sectors of employment that the problem of arbitrary dismissal is in practice most serious.

70 In the nature of the case, however, it is particularly difficult to get information about the extent of the problem in these sectors. In an effort to shed light on this, our T.U.C. representatives asked a number of unions in the fields of agriculture, distribution and white collar employment about their experience of complaints of arbitrary dismissal. These enquiries produced little factual evidence and showed that impressions of the extent of the problem varied. A major union in the distributive trades told us that it was the unanimous opinion of their officers that arbitrary dismissal, for which paltry reasons were often given, was still a common practice there; in the larger enterprises, where trade union organisation was strong, there were appeal procedures, but in smaller establishments and where union organisation was weak, arbitrary dismissals occurred more often and created considerable misgivings on two grounds—because the fear of dismissal inhibited union activity, and because dismissal had usually taken place before the union official could complete his enquiries. A large general union, too, said that a very large number of cases arose every year and that dismissal was used to prevent the development of union organisation; and another large general union thought dismissals were a significant cause of industrial disputes. On the other hand, a major union in agriculture considered that present arrangements were satisfactory and that they did not need to ask for special dismissal procedures; and among the views expressed by white-collar unions were that they were satisfied with their existing procedures, that cases of unjustified dismissal were occasional or that their machinery was used very infrequently.

Summary of present position

71 It appears, therefore, that formal dismissal procedures are general in the public sector of employment and fairly widespread in large firms, especially those employing 2,000 or more. These usually provide for the decision on dismissal to be taken at a level higher than that of the immediate supervisor; for the personnel department to play a part (often advisory) in the decision-making process; and for the employee to have an opportunity to appeal. Appeal is normally to a higher level of management, though there are a handful of cases where it is to a joint body or an independent body or person*. Usually appeals are made in very few cases and only a minority of appeals—sometimes a very small minority—succeed. This may well indicate that the main value of a formal procedure is that it has the effect of ensuring that employees are not dismissed without good reason—i.e. it is as much preventive as remedial. The trade union representative is often consulted and procedures sometimes provide for warning systems, suspension, and in some cases the listing of penalties.

72 There remain a very large number of firms, including the vast majority of smaller firms, which have no formal dismissal procedure. In most industries, however, disputes over dismissal may be taken up through the industry's

* Firms may agree with the trade unions concerned to approach the Ministry of Labour with a view to arbitration. Such arbitrations over dismissal, for which the Minister is usually asked to appoint a single arbitrator under the Industrial Courts Act 1919, have averaged four to five cases a year in recent years.

(96319) A**3

disputes procedure. But the individual employee cannot himself take his case through the disputes procedure; for that he must have the support of a trade union which is party to the procedure. Most disputes procedures in practice deal with very few dismissal cases, and a few can only deal with certain types—e.g. where notice has not yet expired. Cases which are dealt with through disputes procedures do not always end in agreement, but where agreement is reached the result is almost invariably accepted and procedures not infrequently lead to reinstatement. Very few disputes procedures give any opportunity of recourse to independent arbitration.

73 Some employees—particularly those employed by small firms in the less highly organised sectors of employment—may well have no effective means of redress against arbitrary dismissal, whether through the courts, through a disputes procedure or through a procedure within the firm. It is difficult, however, to ascertain the extent of this problem. Enquiries of trade unions in the fields of agriculture, distribution and white-collar employment produced little factual evidence and showed that impressions of the extent of the problem varied.

II. Protection in Some Other Countries

74 By way of comparison we have examined the protection against arbitrary dismissal which exists in some other countries—West Germany, France, the U.S.A., Italy and Sweden. We considered summaries of comment on and information about this, obtained both from the United Kingdom's Labour Attachés in those countries and from published sources. One of our members, Mr. J. L. Grumbridge, also arranged to obtain for us an account of B.E.A.'s experience of dismissal procedures as an employer in West Germany, France and Italy; and the central organisations of trade unions and employers in West Germany were kind enough to provide written answers to a number of questions we put to them about German practice over dismissals. Finally, as we have mentioned, we had the benefit of discussing the position in other countries with Professor Otto Kahn-Freund.

75 We do not attempt to set out in this part of our report all the information we obtained, but to summarise the main features of the systems in other countries to see what light they shed on the questions that concern us.

General

76 As has been shown, in this country dismissal has generally been viewed as a matter for decision by management, subject to the legal requirement to give due notice and the right of unions to make representations and exercise pressure through agreed procedures. In other countries, however, more elaborate concepts of the rights of employer and employee have been developed. These include:

(1) The idea that the employee after service of a certain length acquires certain rights in his job, that dismissal should not take place unless justifiable in the light of general criteria and that unjustified dismissal may give rise to rights of reinstatement or compensation.

(2) The French idea of "abuse of right"—i.e. that if an employer abuses his legal right of dismissal, this may give rise to a right to compensation. It has been argued in France that terms of notice are insufficient to protect the worker against the loss of his employment. They merely give an employee who has been dismissed a little time to look for employment elsewhere. But the worker is not certain whether he can find a new job, and above all a job equal to the one he must give up. On the other hand no undertaking could operate if the employer was bereft of the power to organise it with a view to improving its economic yield, or of the power to enforce discipline. In order to reconcile the interest of the workers in keeping their jobs and the needs of the life of the enterprise, the French courts have made use of the technique of "abuse of right" whereby the exercise of the right unilaterally to terminate a contract of employment is

(96319) A**4

not entirely discretionary—anyone who uses it without a justified motive commits a breach of the law and must indemnify the other party for any damage he suffers.

(3) The German idea of the "constitutional factory" where the undertaking is viewed as a microcosm of the state, giving rise to the idea that the employee enjoys constitutional rights within the undertaking just as the citizen does within the state.

West Germany

77 Two legislative measures give West German workers protection against unwarranted dismissal. The Works Constitution Act 1952 gives the works council in any firm employing more than 20 workers the right of co-decision in staff matters, including dismissals. The works council consists of workers elected by employees and representing the interests of all employees. The employer must inform the works council of every intended dismissal and the reasons for it, asking for its opinion within a reasonable period. Failure to consult does not render the dismissal null and void, but if the employee afterwards takes the matter to a labour court (see paragraph 79), the employer cannot argue that the dismissal was socially justified. The employer is not bound by the works council's opinion, but in many cases managements and works councils discuss all dismissals thoroughly until they reach agreement. An employee who thinks his dismissal socially unwarranted may appeal to the works council which must try to bring about a voluntary understanding between employer and employee. There is special protection for works council members (which makes it almost impossible to dismiss them except for misconduct), women before and after confinement, the disabled and those on military service.

78 An Act of 1951 provides that a dismissal that is socially unwarranted—i.e. a dismissal not based on reasons connected with the employee's person (e.g. lack of physical or mental ability) or conduct or on pressing operational requirements that preclude continued employment—is ineffective. Even where the reason is operational requirements, the dismissal is socially unwarranted if the employer, in selecting a particular worker for dismissal, fails to take sufficient account of social considerations (e.g. age, seniority, family status). Summary dismissal is allowed only for urgent and important reasons—e.g. embezzlement or inability to continue work. The Act does not extend to employees with less than six months' service, to managerial staff, to dismissals resulting from action taken in labour disputes, or to firms with less than six employees.

79 It is open to an employee who wishes to contest his dismissal as unjustified or contrary to legal or contractual provisions to appeal to a labour court within three weeks of receiving notice. (Labour courts, which are composed of magistrates and persons appointed on the recommendation of employers' and workers' organisations, are specialist courts which consider only disputes arising on labour matters.) Proceedings begin with a preliminary hearing which is essentially conciliatory and this leads to a settlement in the majority of cases. If the matter cannot be resolved satisfactorily in this way the labour court calls a further hearing and arbitrates. It is for the employer to prove the facts when dismissal is based on reasons connected with the employee's person or conduct or on the firm's operational requirements. If, however, the worker contends that social considerations have not been taken sufficiently into account the onus

of proving this lies on him. If it comes to a choice between two employees social considerations may have to take second place to operational requirements (e.g. if a particular employee's experience is said to be essential to the enterprise).

80 If the court finds for tbe employee, be may resume his job (if be wishes) and may claim full wages for the time lost, less wbatever he has earned or could bave earned by accepting suitable employment in the meantime; but where it is more appropriate that the employment relationsbip should be ended (e.g. if there is personal animosity) the court can generally order this at the request of either party, with compensation for the employee. In practice employees very often request compensation in preference to reinstatement, and in fixing the scale the court is required to give due weigbt to tbe employee's length of service and the financial position of employer and employee. Compensation may be up to a maximum of 12 months' remuneration. Labour courts bave built up an extensive case law wbicb plays a large part in the legal standards which govern dismissals. Legal representation at hearings is not obligatory. The law requires that proceedings in labour courts should go through as quickly as possible; no estimate is available of how long cases usually take but delays do not seem to be a problem.

81 Dismissal based on reasons of conduct may arise from behaviour outside working hours and this has caused some difficult cases. Most difficulties, however, concern cases where operational requirements are given as tbe reason. Tbe question has been raised wbether the labour court can examine the extent to wbicb business policy really required the dismissal, or whetber this is a matter for the employer's discretion alone. Almost all legal commentators have taken the latter view, but labour courts have varied in their attitude, some taking the line that they are not precluded from examining the considerations of business policy involved.

82 Appeals against local labour courts' rulings can be made to the district labour court in cases involving over DM 300 (roughly £27) or in any case considered to be of fundamental importance. Legal representation is necessary there. In some circumstances furtber appeal can be made to the federal labour court.

83 No information is available on tbe overall number of dismissals or the number of appeals to works councils. The number of dismissal cases decided by tbe labour courts is known; over tbe seven year period 1957–63 the average was some 42,300 per year. There are no statistics, however, of the proportion of appeals tbat are successful; one estimate we were informed of was that the employee was successful in probably rather more than balf of the cases.

84 There is widespread belief in West Germany in the value of this system. Consultation with works councils settles many cases. The conciliation role of the labour courts is also very effective. Both sides of industry consider tbat the decisions of the courts are generally fair and tbat the system as a whole is in general satisfactory. Strikes over dismissal are almost unknown (but West Germany's overall strike record, it should be remembered, is very low).

France

85 In France an ordinance of 1945 requires an employer who proposes to dismiss an employee to seek the prior approval of the State manpower service.

The manpower services are only required, however, to consider the probable economic effects (i.e. repercussions on tbe local employment situation) and a request to dismiss an individual is unlikely to be refused; indeed unless the employer hears to the contrary within seven days he can assume consent, and in practice this is what almost invariably happens. Nor would failure to seek prior approval make the dismissal invalid—the employer merely renders himself liable to a penalty. Tbe procedure does not operate in agriculture or in some industries such as construction where turnover is rapid.

86 Fuller protection, however, arises from provisions in collective agreements and from the French legal concept of "abuse of right" (see paragraph 76 (2)). The latter can give rise to damages, but the courts will not order reinstatement. The burden of proving abuse of right rests on the employee; and a decision of the Supreme Court in this field in April 1961 tended to emphasise the importance of management's prerogatives. The practical effect of this protection is therefore limited.

87 There are, however, safeguards for particular categories and in particular circumstances. Legislation specifies suspension and not dismissal as the proper course in some circumstances (these include pregnancy—generally for six weeks before and eight weeks after confinement) and dismissal in such cases would be "abusive". A strike suspends the contract of employment but does not put an end to it except in the case of serious misconduct; and an employer may not take into account, in reaching a decision about dismissal, membership of a trade union or participation in union activities. Dismissal in violation of safeguards laid down in collective agreements or works rules or with malicious intent would also be abusive. (To give an example, a dismissal was declared abusive where a man with 28 years' service had been dismissed for no other reason than that his superior disliked bim.) There is also special protection for staff delegates (i.e. sbop stewards) and for members and deputy members of works committees—generally tbey can only be dismissed with the consent of the works council (or, where none exists, the employment service)—but it is not clear how valuable this protection is in practice. There is a general right to reinstatement following military service.

88 Recently, older workers have obtained further protection through the inclusion in some collective agreements of provision for "seniority indemnities" —payments on defined scales which the employer agrees to make on terminating the employment of any elderly worker, irrespective of the reason for dismissal. But these indemnities so far cover only a minority of workers (mainly in the white-collar field). This develόpment may reflect the limited protection given by the law—particularly the fact that in the event of dispute the onus of proof is on the employee.

89 Disputes about dismissals generally come before tbe *conseils de prud'hommes* —bodies made up of equal numbers of wage or salary earners and employers, elected for six-year terms and taking it in turns to act as chairman. Their function is to settle disputes on all questions arising from contracts of employment by conciliation if possible and to give judgment in cases where conciliation has failed. The individual can refer his case to tbe *conseil*—trade union support is not needed—and except for a registration-type fee of about £1, the procedure is free. Legal representation is usual, at least in cases that go beyond conciliation

to the judgment stage. Where the amount in dispute is less than 1,500 francs (about £110) the *conseils* have final jurisdiction but in other cases there is a right of appeal to a higher court. The remedy awarded is compensation, not reinstatement.

90 No statistics are available on either the number of disputes over dismissals brought before the *conseils de prud'hommes* or the results of such cases. The *conseils* deal on average each year with some 50,000 disputes on all questions within their jurisdiction—e.g. holiday pay, interpretation of works rules, etc., as well as dismissals. Of this total about 20,000 are taken to the judgment stage; over half of the remainder (i.e. at least 15,000) are usually settled following conciliation. In the provinces most cases are settled within two months, though in Paris delays of six months are not uncommon.

91 It appears that the protection against arbitrary dismissal provided both by law and by collective agreements in France is limited, but that the *conseils de prud'hommes* are widely regarded as a useful and effective instrument for settling disputes.

United States of America

92 In the U.S.A. there are virtually no general legislative restrictions on an employer's right to terminate employment (though there are statutory provisions in a few industries, e.g. railways). Employees may, however, enjoy protection in other ways, mainly through the provisions of collective agreements which often deal with dismissal questions in detail, although these cover less than half the working population. Many of the remainder probably have considerable security of employment (e.g. federal, state or local government employees) or have some degree of protection granted voluntarily by employers, or are not liable to dismissal (e.g. the self-employed). The absence of information makes it difficult to draw conclusions about protection against dismissals in the U.S.A. In general, however, it is thought that management tends to guard its prerogatives in this field.

93 So far as redundancy is concerned, collective agreements often contain provisions governing selection for lay-off or dismissal—generally specifying the following of seniority order; employees laid off for economic reasons often retain a right to re-engagement if conditions improve.

94 Dismissals based on the employee's own conduct or unsuitability bring into play different provisions of collective agreements—e.g. it may be laid down that no employee can be dismissed except for just cause. Relatively few agreements provide for consultation with the trade union before dismissal. But if a union considers that a dismissal violates an agreement, it can almost always be challenged under procedures established by the collective agreement. These usually provide for joint discussion (generally at a number of successive levels) of a wide range of grievances including grievances over dismissal and, failing settlement in this way, for arbitration. An employee who is dissatisfied over the union's handling of his grievance also has the right to present his case on his own initiative. Case law has established that an arbitrator can make an order for reinstatement in cases of wrongful dismissal and the courts will enforce such an order.

95 No statistics are available generally of the number of appeals against dismissal taken through grievance procedures established under collective bargaining agreements.

96 A recent study of major collective bargaining agreements in the U.S.A. showed a considerable similarity in their main provisions. In addition to the features mentioned above there is common provision in the case of dismissal questions for the time limits generally laid down for each stage of procedure to be shortened, or for some of the first stages to be omitted. Information is not available on how long cases take to go through procedure but we understand that delays (sometimes very lengthy) tend to occur under both the voluntary system and the corresponding statutory arrangements (e.g. those covering the railroad industry). Most agreements also provide for suspension of the employee at the employer's discretion; a few prohibit dismissal until the issue has gone through all stages of procedure, unless the employer and the union agree otherwise. Generally, dismissal during a probationary period either is not subject to grievance procedures or may be taken only through the first stages of the procedure (e.g. it may not be taken to arbitration).

97 There is special protection against dismissal for engaging in union activities (though this does not apply to, for example, instigating an unauthorised strike), and dismissal arising out of military service. Dismissal for racial reasons is not covered by Federal enactments but a number of states (including New York) have passed fair employment legislation outlawing this and, in some cases, giving the courts power to order reinstatement.

98 It is not easy to generalise about the position in the U.S.A., but its main features are its dependence on collective agreements and the widespread use of arbitration (sometimes involving long delays) under these, and the use by arbitrators, and enforcement by the courts, of the remedy of reinstatement.

Italy

99 Collective and individual dismissals in Italy are regulated by two agreements between the central employer and trade union organisations—the trade union confederation and the industrial employers' confederation. These agreements cover about half the employed population but their principles have been extended by law to most other sectors of employment.

100 Under the agreement on *collective dismissals* (i.e. for reasons of redundancy) an employer wishing to reduce his labour force must inform the trade union, who have seven days in which to ask for a meeting with the employers' organisation. Negotiations must normally be completed within 25 days but in certain circumstances can be extended to 40 days. If no meeting is asked for, the employer can put the proposed reduction into effect at once. In deciding the order of dismissal he has to take account of the firm's technical and production requirements, and the employee's seniority and family responsibilities.

101 Dismissed employees have the right to be re-engaged if, within a year, the employer again recruits for the jobs concerned. The exceptions to these arrangements include dismissals in the building industry and dismissals of those above pensionable age.

102 The agreement on *individual dismissals* stipulates that an employee should be dismissed only for a "just cause", e.g. for disciplinary reasons, or where the employer has a "justified reason" for making him redundant, e.g. economic conditions. In particular, dismissal should not occur for reasons of religion, political opinion or trade union membership. The employee must be notified in writing of his dismissal and has the right to demand the reasons for it. If he disputes the motives for dismissal the onus of proof rests on the employer.

103 Under the agreement a worker who considers his dismissal unjustified has five days in which to appeal to his trade union, which can attempt to mediate. If this mediation is not successful within five days, the worker can ask (within 20 days of receipt of notice of dismissal) for the case to be considered by a Conciliation and Arbitration Committee composed of representatives of the employer and workers and an independent chairman. If the Committee considers the dismissal unjustified, it may order reinstatement. If the employer fails to carry this out, the Committee determines a penalty to be paid to the worker by the employer. This is in addition to any notice or payment in lieu due under the general labour laws and any relevant collective agreement, and to the "leaving indemnity"—a payment on a defined scale which the employer is generally obliged to make on dismissal, irrespective of the reason for termination. The penalty is normally not less than five months' or more than 12 months' pay. For workers with over 20 years' service the maximum is raised to 14 months' pay and for those with less than 30 months' service it is reduced to eight months' pay. All these limits are, however, halved for firms employing less than 60 workers; and firms with less than 35 workers are subject only to the mediation part of the agreement.

104 There is additional protection for those engaged in union activities. Any allegation by a works representative or a member of a works council that his dismissal arises from union activities may be investigated by a committee composed of one representative from each side of industry under an independent president. If this committee finds the allegation proved the dismissal is void; if it is not proved, the dismissal may still be contested through the normal procedure applicable to other members.

105 Statistics are available of the number of dismissals, individual and collective, which have been contested through the procedures described above: these refer to those covered directly by the agreement. Broadly, of *individual* dismissals investigated during 1960–64 the employee was successful (i.e. either the case was decided in his favour or the dismissal was withdrawn) in 8 per cent of cases. This total is made up of the following categories:

Non-disciplinary dismissals	9·7% successful
Disciplinary dismissals	5·4% successful
Dismissal of works council members (preliminary investigation)	4·3% successful

In the case of proposed *collective* dismissals of which the unions were informed during the same period, some 30 per cent were not put into effect—no doubt in some, if not all, cases because of union resistance.

106 There are indications that the system in Italy is over-elaborate and makes it difficult to dismiss employees—partly because compensation may be very expensive—without giving workers in general wholly satisfactory protection.

Appeals against dismissal are numerous but very few are successful. Many employers feel it necessary to keep written records of reprimands and other disciplinary action as evidence if the worker's dismissal at a later date is challenged.

Sweden

107 The "Basic Agreement" between the Swedish central confederations of employers and trade unions sets out a procedure for handling lay-offs and dismissals which provides for conciliation in certain circumstances and arbitration (including the possibility of awarding damages) in others.

108 The procedure provides, first, for immediate consultations over dismissals between the employer and the local union representatives. Negotiations may then follow at industry level. Thereafter the union has discretion to refer the matter to a Labour Market Council set up jointly by the two confederations to settle disputes on this and other matters covered in the Agreement. In its conciliation role the Council sits as a bipartite body, but when it functions as an arbitrating committee it is strengthened by the appointment of an independent chairman.

109 The Agreement provides that the employer, without prejudice to his sole prerogative to decide how many workers he needs to maintain production, must give the union prior notice of all reductions in his labour force. This obligation applies to dismissals and lay-offs lasting over two weeks of workers with at least nine months' continuous service, and also to their subsequent re-engagement. It does not apply to workers employed for a limited period or job of work, dismissals for misconduct (although such dismissals may be taken by the union to the Labour Market Council for arbitration) or lay-offs resulting from seasonal or similar factors. Two weeks' warning must if possible be given by the employer to the local union representatives (not necessarily to the individuals affected) in addition to the period of notice provided for by the collective contract. Employer and union must consult, at the instance of either side, when there is any question of dismissing, laying-off or subsequently engaging or re-engaging workers.

110 If an employer gives a worker notice "on account of some circumstance affecting the worker individually", the union may refer the matter to the Labour Market Council for arbitration, providing the worker has been in the employment for at least nine consecutive months and is 18 or over. If the Council finds that there were no "material grounds" for the employer's action, it may award the worker damages.

111 The Council's joint secretaries (one from each side) first visit the workplace to investigate the circumstances; usually this suffices to settle the matter. One of the secretaries' first considerations is therefore to establish whether the case is more appropriate to conciliation or arbitration. If the secretaries cannot dispose of the case and it proceeds to the Council, an assessor from each side at national level is appointed to sit with the Council. The Council is guided in its deliberations not by hard-and-fast rules but by what is reasonable. Considerations of the employer's economic need for suitably-qualified staff and the worker's interest in security of employment both play an important part in deciding whether the employer's action was reasonable. In awarding damages, the Council is free to have regard to wider issues than purely material factors such

as actual loss. At the date of our information the Council itself had only awarded damages in one case, the amount being SKr 12,000 (some £830), equivalent to three months' salary. In two recent cases the secretaries recommended damages of SKr 1,500 and 2,000 respectively (about £100 and £135), which were accepted by the employers.

112 Up to 1964 (when the provision for arbitration was first introduced) some 42 cases had been referred to the Council. Two-thirds of these were settled by the secretaries without reference to the full Council. Of the 14 cases examined by the Council, seven concerned dismissals of individual workmen for alleged negligence and six concerned lay-offs because of shortage of work. In about two cases out of three the Council found in favour of the worker's side. Since 1964 four cases had been reported, two of these being settled by the secretaries and two remaining outstanding at the date of our information.

113 Salaried employees and foremen and supervisors are covered by similar "Basic Agreements" with the unions concerned. None of the agreements applies to unorganised workers; few manual workers, however, are not trade union members. Nor do they apply to members of unions that are not party to the agreements, e.g. unions covering construction and road transport; but collective agreements in these industries provide that appeals against dismissal not settled at branch level may be referred to a general Labour Court. We understand, however, that not many cases are referred.

114 Salaried employees have more job security and longer notice than manual workers, and few disputes have arisen over dismissals in this field.

115 The Swedish system seems to command the support of both sides of industry. Disputes over dismissal are rare and are usually settled satisfactorily by the procedures. As in West Germany, strikes are very few and strikes over dismissal most exceptional.

Summary of position in other countries

116 It will be seen that the provision of safeguards against arbitrary dismissal varies widely between different countries. We summarise below the main points:

(1) In all the countries we studied procedures for contesting arbitrary dismissal have been established, by voluntary agreement (Italy, Sweden and the U.S.A.) or by statute (France, West Germany).

(2) In three countries—France, West Germany and Italy—appeal can be brought by the individual employee. In Sweden only a union can use the procedure. In the U.S.A. the initiative rests with the union, but if the employee is dissatisfied with its handling of his case he may raise it himself.

(3) Where a court or tribunal etc. has been established the body may comprise only representatives of both sides of industry (as in France) or may also include an independent element (Germany and Italy). In three countries (France, Germany and Sweden) the tribunal's jurisdiction extends to disputes over interpretation of other aspects of collective agreements or contracts.

(4) The procedure in West Germany provides for the preliminary consideration of all dismissals by the works council, though the employer is not bound by its opinion.

(5) Redress to an employee found to have been unjustifiably dismissed usually takes the form of compensation. In Sweden the Labour Market Council can award damages only. In France the courts will not generally award reinstatement. In Italy reinstatement can be ordered but in practice it is not enforced: the defaulting employer instead pays damages to the worker. The German labour courts can order reinstatement but either the employer or employee can opt for compensation instead. In the U.S.A., however, the courts will enforce reinstatement if recommended by arbitrators. This is the only one of these countries where reinstatement seems to be a reality, a fact perhaps connected with its higher proportion of large enterprises (where it will usually be easier to re-absorb an employee, e.g. in a different section).

(6) The burden of proof may rest on either the employer or employee. In Italy and Sweden it is for the employer to show that he had just cause or material grounds for the dismissal; in France the employee must show that the employer has abused his rights. In Germany the onus is on the employer when dismissal is due to operational requirements or is connected with the employee's personal conduct, but on the employee when he considers that the employer has failed to give due weight to social considerations.

(7) In four of the countries there are additional safeguards for those involved in union activities: the special procedures may for example require that any such dismissal should be agreed first by the joint works council.

(8) In the four countries that have established labour courts or similar bodies, these have an important conciliatory role. It is only when conciliation fails or is inappropriate that the case goes to judgement or arbitration.

(9) Little is known about the speed of procedures generally but there is some evidence of delay, particularly in the U.S.A.

III. Need for More and Better Procedures

General

117 What conclusions should be drawn from our survey of protection against unjustified dismissal in Great Britain (Part I)? In the first place, we must re-emphasise that in practice, most workers in this country enjoy security of employment going well beyond their legal rights. Quite apart from the effect of dismissal procedures (whether internal or external), most employers have no wish to indulge in arbitrary dismissal and if they do so they may have to face protests in the form of collective action by other workers. We found no evidence that large numbers of unjustified dismissals take place in this country, nor that there are many workers with grievances over dismissals (though in some sectors of employment it is very difficult to obtain evidence about the size of this problem).

118 But this does not mean that no problem exists. Workers in a firm where management is very cautious in exercising its power of dismissal, because of shortage of labour and the fear of collective action, may in practice run no more risk of being dismissed arbitrarily than workers in a firm with a proper dismissal procedure; but the latter arrangement is greatly to be preferred. A formal procedure which both workers and management know and understand can help greatly in giving workers a sense of security and confidence that, if they run into difficulties at work, they will get fair treatment. Management benefits too; under a formal procedure each level of management knows (or should know) the extent of its own authority and how dismissal questions should be handled, and this lessens the risk of inconsistent or ill-considered decisions.

119 Formal procedures also help to avoid disputes over dismissal. As we pointed out in paragraph 8, over the years 1964–66 stoppages of work arising from dismissals in circumstances other than redundancy averaged about 9 per cent of all stoppages and accounted for about 8 per cent of all working days lost through stoppages. These figures are not high—though they are certainly not negligible—but we do not think they tell the whole story. In our view disputes over dismissals, because they affect workers' sense of security, are particularly liable to leave a legacy of bitterness and distrust; they also tend to be unusually difficult to settle because, in the nature of the case, there is often little scope for compromise.

120 We therefore consider that in both the short term and the long term, formal dismissal procedures have a substantial contribution to make towards better industrial relations.

121 Five points may be noted about procedures in Great Britain in comparison with the position in some other countries:

(*a*) *Legal safeguards* in general protect employees only against dismissal without due notice. They give no protection against being dismissed unfairly or without good reason. The courts do not award reinstatement to an employee wrongfully dismissed.

(*b*) *Formal internal procedures* of a satisfactory kind are not very common and are usually found only in large concerns. This is particularly serious because the great majority of grievances about dismissals are bound to be matters dealt with within the individual firm.

(*c*) *External procedures* as at present operated have their limitations in the field of dismissals. Because of the delays which are sometimes inevitable when a matter is taken right through an industry-wide procedure, in practice a dismissed worker often takes another job and the case lapses without his grievance having been properly thrashed out. Most disputes procedures handle very few dismissal cases, and some only deal with certain types of dismissal. In general the individual worker cannot himself take his case through the procedure—he needs the support of a trade union.

(*d*) *Less highly organised sectors of employment* may have no external procedure through which a complaint against dismissal can be pursued; and they are often made up almost entirely of small firms, most of them without any satisfactory internal procedure. In these sectors, therefore, an employee may have no effective redress against arbitrary dismissal.

(*e*) *The right of appeal to an independent person or body* is not provided, with rare exceptions, by either internal or external procedures. The normal practice is for appeals within the firm to be heard by a higher level of management, and in external procedures to be considered by a joint body of the two sides (except in the rare cases where the procedure includes provision for independent arbitration).

122 In the paragraphs which follow we consider ways of improving the present situation. Our discussion falls into three main parts:

(1) *Internal voluntary procedures.* How great a contribution can and should these make towards providing safeguards? What features ought they to include? What about the special problems of small firms? What is the place of joint procedures?

(2) *External voluntary procedures.* What part should these play? What should be their relationship to internal procedures? What are their limitations? Do they deal with enough dismissal cases? Can they be speeded up where necessary? Is there a case for special arrangements to deal with dismissals?

(3) *Statutory machinery.* Is it enough to encourage the development of voluntary procedures, both internal and external, or is there a need for statutory machinery to deal with dismissal cases? If there is, what form should it take, what should be its scope and what remedies should it afford?

(A) Internal voluntary procedures

123 There are good reasons why dismissal questions can generally best be handled within the firm. Where properly done, this gives a remedy against arbitrary dismissal which has the great advantages of being simple, inexpensive and (perhaps most important) quick. Those dealing with the matter, on both the management and the workers' side, have a familiarity with the general circumstances of the firm and its work which should enable them to see the situation more clearly; and the matter can generally be handled informally and settled with no need to adopt rigid or legalistic procedures. It seems clear to us, therefore, that the simplest and most effective way in which the situation could be improved is by the extension of satisfactory internal procedures.

Important features

124 These advantages only apply, of course, where the internal procedure is fair, sensible, and operated in the proper spirit, and where this is seen to be so. We have described in Part I the main feautres of the types of internal procedure most common in Great Britain. We do not think it possible to lay down a detailed form of procedure for all firms. Much depends on the individual circumstances and the size of the undertaking. Such matters as the differences between the stability of employment in different industries, or the special importance of (for example) safety precautions in some establishments, may affect decisions on what arrangements are most suitable. Flexibility in this matter is essential. But there are certain important features which, in our view, are clearly desirable and should, as far as circumstances allow, be included in all internal procedures. These are as follows:

(*a*) *Knowledge of the procedure.* It is essential that both workers and management at all levels should know and understand the procedure—including the level at which decisions to dismiss are taken. This should not be left to chance; management should take positive steps to ensure that the procedure is explained in clear and straightforward terms to all concerned, together with how to obtain further information if desired.

(*b*) *Opportunity to improve performance.* After probation, a worker whose performance becomes unsatisfactory should not be dismissed without having been given fair warning and full opportunity to improve, including guidance on where his failings lie and a trial on other work if appropriate.

(*c*) *Level of decision to dismiss.* It helps to avoid hasty or ill-considered dismissals if the decision whether to dismiss does not rest solely in the hands of one individual. It may often be advisable for the immediate supervisor to have the power to suspend (see (*d*) below) and recommend dismissal and for the actual decision to rest with a higher-level line manager e.g. the works manager) after consultation where appropriate with the personnel department.

(*d*) *Establishing the facts.* Decisions on dismissal should not be taken hastily. Time may well be needed for the facts of the case to be clearly established and dispassionately considered. In some cases, however, (e.g. alleged serious misconduct) it is not appropriate for the worker to remain on the job pending a final decision. If so he should be suspended until the decision

is made. This is to be preferred to instant dismissal, and need not prejudice the question whether dismissal, if this is decided on, should be summary or after due notice. Whether suspension should be with or without pay depends on the circumstances of the individual case. (Suspension pending decision is something quite different from suspension as a penalty in itself—"disciplinary" suspension—which we discuss below.)

(*e*) *Role of trade union representative.* Where workers are organised in trade unions there are advantages in management's discussing dismissal cases with an appropriate trade union representative (e.g. the shop steward) before taking a decision. Sometimes it may be advisable, before anything is said to the worker concerned, to give the shop steward the chance to point out any special circumstances which may put the matter in a different light. In any case the shop steward should have full opportunity to discuss the matter with management and with the worker concerned before a final decision is made. (This does not mean that the shop steward should assume any part of the responsibility for the decision; this may well be inadvisable.)

(*f*) *Opportunity for worker to state case.* Before any decision to dismiss is taken the worker should have the opportunity to state his side of the case personally (and to make written representations if he wishes), assisted if he wishes by his trade union representative or by a "friend" (e.g. a fellow-worker).

(*g*) *Reason.* Where dismissal is decided on, management should tell the worker the reason for his dismissal, clearly and frankly. Notice of termination should normally be given in writing.

(*h*) *Opportunity to appeal.* Any worker should have the opportunity to appeal against dismissal. Where the appeal is to a higher level of management, it is vitally important that the person hearing the appeal should be impartial and be seen to be impartial. In large concerns this may best be achieved if appeals are heard by a member of management sufficiently removed from the level at which the decision to dismiss was taken. A worker appealing against dismissal should, of course, be given proper facilities for stating his case personally, with assistance if he wishes, to the person hearing the appeal.

(*i*) *Speed.* It is obviously necessary that the procedure should work quickly and without excessive formality. It may help if time limits are laid down for the different stages, but these should not be inflexible. (It must, of course, be remembered that there is a difference between quick decisions and hasty decisions.)

125 There are certain other points which in our view ought to be considered by those concerned with internal procedures.

(*a*) *Probationary periods.* The new entrant should have a probationary period (the right length for this will vary according to the nature of the work). It is not unreasonable for management to reserve the right to give a worker notice during this period without going through the regular dismissal procedure if it becomes clear that he is unsuitable, though even during probation workers should not be dismissed without good reason.

(*b*) *Other penalties.* Dismissal is not, and should not be, the only disciplinary action available to management. There is a wide range of other measures which may be appropriate according to the circumstances, among them warnings (including the formal warning that unless there is improvement, further action will have to be considered) and financial penalties. Disciplinary suspension without pay can have a salutary effect without carrying the full rigour of dismissal. It is usually imposed for short periods only, often up to a maximum of three days, and is quite different from suspension pending a decision as to dismissal. We have noted (paragraph 30(*c*)) that in the firms studied by Mr. M. D. Plumridge, not one of the shop stewards in factories where disciplinary suspension was used wished to do away with it; but we have also noted there that disciplinary suspension is not always permissible under the contract of employment.

(*c*) *Listing of offences and penalties.* As we mentioned in paragraph 30(*a*), some firms lay down in writing defined scales of penalties for particular offences. This can have obvious advantages in giving clear guidance to management and supervisors and—where the information is available to workers—in ensuring that they realise the seriousness of particular offences (e.g. smoking in areas where this is dangerous), though this can be done in other ways. No such list can be exhaustive, and putting a list in writing may have the effect of inhibiting the exercise of that discretion and flexibility which is essential in deciding what penalty is appropriate in the circumstances of a particular case. There is also the possibility that the listing of certain offences as warranting dismissal may create the impression that these are the only offences which can do so. Provided, however, that these disadvantages are avoided, e.g. by suitable presentation, a sensible list of offences and penalties can be useful from the point of view of both management and workers.

Small firms

126 The main difficulty in establishing internal procedures which satisfy the criteria set out in paragraph 124 arises in small firms, particularly as regards the level at which the decision to dismiss is taken and the opportunity to appeal against dismissal. In the small firm there will often be no higher level of management at which the question of dismissal can be reconsidered or an appeal against dismissal heard (though where the firm is covered by an external procedure competent to handle dismissal cases, this will normally give opportunity for the trade union to bring the case before people unconnected with the immediate circumstances of the matter). Even in the small firm, however, it helps if certain commonsense rules are observed. We would like to see it laid down in every small firm—and known and understood by all concerned, both management and workers—that no decision to dismiss should be taken hastily, without the worker having been given the chance to improve his performance (where appropriate) or without all the facts being available; that the worker should have the opportunity to state his side of the case, with the assistance of his trade union representative (if he has one) or a "friend" if he wishes, before action is taken; that the worker's trade union representative (if he has one) should have full opportunity to discuss the matter with management and with the worker concerned before the final decision; and that where dismissal is decided on, the worker should be given the reason for dismissal clearly and frankly.

Joint internal procedures

127 Is it advisable for internal procedures to include consideration of the case by some joint body of management and union representatives? Our enquiries showed that in this country examples of this are very rare and that where such bodies do exist they are usually advisory only and not decision-making. We have already emphasised the value of consultation with trade union representatives over dismissal questions. A joint advisory committee to consider dismissal cases may offer an effective and convenient way of doing this and can also have the value of assuring the worker that his side of the case has been fully and sympathetically considered.

128 Joint decision-making bodies, on the other hand, might raise certain problems. It is often contended—and this view was put to us—that the principal function of any trade union is to safeguard its members' interest and that its ability to do this in dismissal cases (and its members' confidence in that ability) might be undermined if the union bears any part of the responsibility for the decision to dismiss. It may be felt, therefore, that the union should confine itself to the role of workers' advocate rather than playing a part in the work of the judge or jury. But employers and trade unions are, of course, free to agree on arrangements for joint decision-making if they wish.

129 *Encouragement of internal procedures.* We conclude this section of our report by recommending strongly that the development of satisfactory internal procedures, and the improvement (where necessary) of existing internal procedures, should be encouraged. The Ministry of Labour should promote this objective by means of its advisory services to industry and through its publications. The C.B.I. and individual employers' associations should ensure that their members realise the advantages of internal procedures, and be ready to give help and advice with their establishment and improvement. The trade unions should point out the desirability of effective procedures to management, where appropriate, and should urge their members to co-operate in their proper use; the T.U.C. should be prepared to advise unions about this. Finally, it must generally be management's responsibility to take the initiative in this matter, and we hope that more and more managements will do so. Managements in the public sector, where there are already many well established procedures, should not overlook the need to review their procedures from time to time and to ensure that they are satisfactory.

(B) External voluntary procedures

130 The purpose of external voluntary procedures is to deal with questions which cannot be settled within the firm or establishment. Our enquiries showed that over most of industry in this country there are agreed disputes procedures which can deal with dismissal cases, though a few are restricted in the types of case they can handle. The value of these procedures is a common-place of our industrial relations system and is demonstrated by the almost invariable acceptance of their results and by the fact that because of their conciliation function, they not infrequently result in reinstatement* (which is not a remedy provided to

* As pointed out above (paragraph 65), we use the term "reinstatement" to cover both full reinstatement, i.e. re-employment without any loss of rights or status, and "re-engagement", which may be at a different level of work or without preservation of seniority rights (other than those preserved by statutory provisions) and other rights and privileges.

employees by the courts). Often they play a particularly important part in preventing disputes over the dismissal of shop stewards or other trade union representatives. But they cannot take the place of adequate procedures within the firm. In a number of industries both sides are conscious of the special need for speed in handling dismissal cases and often achieve this, but sometimes delays are inevitable. (We do not wish to imply that speed is the only aim in dealing with dismissal cases. The aim must be a settlement that satisfies all parties, and there are times when a judicious interval can make this easier—e.g. by allowing tempers to cool and giving more opportunity for conciliation. But clearly dismissal questions need to be settled without undue delay, and this is particularly important in external procedures where, if the matter drags on, the worker involved may find another job and the whole case lapse—but without having been properly dealt with, so that a legacy of ill-feeling and suspicion may remain.) Moreover the external procedure cannot be invoked by the individual worker; he can raise his dismissal through the procedure only if his trade union supports him.

131 It is also important to avoid the danger that when a case goes to higher levels of procedure it may be discussed without that close knowledge of the particular circumstances which can often contribute most to a sensible solution. (This is not inconsistent with the need for impartiality to which we refer below; those concerned at higher levels should be far enough removed from the immediate circumstances of the case to be able to consider it impartially, but not so far as to be unable to appreciate all the factors involved.)

132 We are in no doubt that every encouragement should be given to industries which do not already have procedures capable of dealing with dismissals to develop them. Similarly, where procedures cannot handle all types of dismissal case, their scope should be widened so that they can; we can see no virtue in excluding certain types. We also think it important that any unnecessary delay should be avoided—though, as we have pointed out, speed is not the only important factor. Finally, it seems clearly desirable, as with internal procedures, that the procedure should allow appeals against dismissal, where necessary, to come before people who can consider them impartially. In an industry-wide procedure the later stages of the procedure should ensure this. Provided these points are borne in mind, we think it best to leave industries to decide for themselves what form of procedure suits them best.

133 Often the first stage of an industry's disputes procedure consists of attempting to settle the matter within the establishment. In firms with a satisfactory internal dismissal procedure (other than the first stage of the disputes procedure) there may be dismissal cases where the internal procedure is followed and the management stands firm on its decision to dismiss, but where the trade union decides to take the matter further under the disputes procedure. We are confident that if a dismissal raised by a trade union under an external procedure has already been fully discussed within the establishment through its internal dismissal procedure, the parties to the external procedure will take account of this and, if appropriate, proceed direct to the second stage of the latter.

134 One area not generally covered by external voluntary procedures is that of the "single-employer industry", such as many of the nationalised industries

(almost all of which have agreed procedures). A similar case is that of large non-federated firms in the private sector with their own internal procedures (whether covering the whole firm or particular establishments within the firm). In both instances procedures rarely provide for reference to outside persons; generally, appeal is to management alone. However, appeals are usually considered at a level well above that at which the original decision was taken, and in some cases in the public sector appeal is to a board or committee which must include management representatives from other areas or sectors of the organisation. These facts greatly increase these procedures' assurances of impartiality. Although they may not offer the full recourse provided by those with an external element, we recognise that they may nevertheless incorporate safeguards which can do much to ensure objective consideration of appeals.

Special arrangements

135 We have considered whether some of the difficulties mentioned in paragraphs 130–131 could be overcome if industries developed special arrangements for dealing with dismissal cases in external procedures.

136 There are strong arguments in favour of special arrangements. In particular, they can enable such cases to be dealt with more quickly. There may well be workers who have grievances over dismissal and would like to raise them under an external procedure, but who are not prepared to set in motion the full apparatus of the industry's disputes procedure, nor to face the delays which in some cases this must inevitably involve. It could also be argued that those operating such arrangements would build up a body of experience and knowledge of dismissal questions which might result in cases being handled more satisfactorily and in more being raised through procedure (in contrast to the comparatively few raised in disputes procedures at present).

137 One type of special arrangement which (depending on the arrangements in the industry) merits consideration would be for dismissal cases which cannot be settled within the establishment to be referred to a joint body which can send representatives from each side of the industry to investigate the position at short notice on the spot. This is not unlike the arrangements operated for industry generally by the Labour Market Council in Sweden. This should enable the matter to be dealt with quickly and informally and give an opportunity for the representatives to act as conciliators where appropriate—a very important role in many dismissal cases.

138 There are already arrangements of this general character in some industries. In building, for example, the joint machinery includes regional conciliation panels established by the National Joint Council to deal with claims that its rules and working rules have not been observed (where these claims have not been settled by local joint committees)—i.e. questions of a contractual nature. These panels are required to hear and if possible determine claims as soon as possible, and in any case within 21 days. A further 21 days is allowed for the submission of an appeal to the National Conciliation Panel whose decision is final. The joint machinery also includes regional disputes commissions, which are appointed where necessary by the employers' and trade union federations to resolve disputes which have led to a stoppage of work or threaten to do so. These consist of three employers' and three trade union representatives, drawn from their respective regional and national executive committees, plus one official each

from the employers' association and the trade union. They are required to hold an enquiry, normally in the place where the dispute is occurring or about to occur, without delay (in fact they are usually convened within about a week), and are empowered to make recommendations to the respective national executive committees and to give directions as to preventing a stoppage or providing for a resumption of work pending consideration of their recommendations. Questions not settled by the regional commission can be referred to a national commission. Dismissals provide roughly half of the cases under both procedures.

139 Another example is the boot and shoe industry, where disputes can be investigated unofficially by the local trade union official and the secretary of the local manufacturers' association, occasionally accompanied by one other representative of each side. These informal committees of enquiry almost always reach agreement and in very few cases are their advice or recommendations not accepted. Their most common recommendations in dismissal cases are either reinstatement or, on the other hand, confirmation of the dismissal, but compensatory payments to the employee or stoppage of pay in lieu of dismissal are not unknown. In iron and steel, too, there are agreements providing for differences which are not settled within the works where they arise, nor by a joint district committee, to be referred to a "neutral committee" consisting of two employers' representatives and two workmen (none being officials of the employers' association or the trade union nor persons from the works where the difference arose). Members of the committee have plenary powers and their decision is binding. If the neutral committee failed to settle the matter it would proceed to the further stages of the procedure. In practice, however, it is understood that neutral committees are little used as differences are almost always settled within the works.

140 In our view the attractions of special arrangements are considerable in the context of dismissal cases. We do not think, however, that we can lay down general rules, applicable to all industries, as to whether special arrangements are desirable and, if so, what form they should take. That is a matter for industries themselves to consider in the first place and in particular it is for them to decide what modifications, if any, of existing procedures are necessary or desirable in their own case to ensure that these handle dismissals satisfactorily. But we certainly feel that industries should re-examine their procedures to see whether changes are required and whether there is not a need for special arrangements which can enable dismissal cases to be investigated quickly and informally on the spot.

Non-members of trade unions and employers' associations

141 In so far as protection against arbitrary dismissal is provided by voluntary external procedures (whether the disputes procedure or a separate procedure), what should be the position where the worker is not a member of a trade union which is party to the procedure agreement, or where his employer is not a member of a similar employers' association?

142 In the latter instance—where the employer is non-federated—we think the parties to the agreed procedure might give consideration to the possibility of allowing it to be used for such cases, subject to any necessary conditions. In the building industry, for example, arrangements can be made for disputes

arising in non-federated firms to be taken through procedure provided the employer agrees in advance to accept the findings of the procedure. It is found that such employers are often impressed hy the procedure's efficiency and join the association. But this cannot he expected to happen every time, and handling cases under a procedure costs time and money. We see no reason in principle why the parties to a procedure should not make a suitable charge, if they wish, to non-federated firms who wish to use the procedure to resolve their dismissal disputes. Naturally, however, it must remain entirely a matter for the parties to a procedure to decide whether they can make it availahle to non-federated employers or not.

143 The position of workers who are not members of a trade union is perhaps more complicated. It can certainly he argued that every worker has a right to appeal against dismissal as an individual, irrespective of whether he is a trade union member or not. On the other hand, where protection against arbitrary dismissal takes the form of industry-wide procedures agreed hetween employers' organisations and trade unions, it may he argued that a worker who chooses not to be a memher of a trade union naturally forfeits this protection, just as he forfeits other forms of protection which the union can provide (e.g. against failure to ohserve agreed wage rates); if he suhsequently regrets this it is his own responsihility, and in any case he can remedy his lack of protection by joining the union. We think there is a good deal of force in this argument, and we helieve that many unions would adopt a generous attitude towards taking up dismissal questions on hehalf of newly-joined members, even if the incident complained of took place before memhership. But it has to he remembered that some workers are non-members not hecause they have made a positive decision to that effect hut hecause it is not easy for them to join a union—principally workers in the less highly organised sectors of employment and in small firms where there is no union representative; in such circumstances ohtaining and maintaining memhership may present real practical difficulties.

144 We do not wish to exaggerate the prohlem of non-members, whether of trade unions or of employers' associations. It is a prohlem of external procedures; there is no reason in principle why internal procedures should not generally be availahle to union members and non-members alike, though naturally the non-memher cannot enjoy the support and assistance of a union representative. As we have already said, external procedures cannot take the place of adequate procedures within the firm. Again, none of the evidence we have had indicates that dismissal prohlems are particularly serious for non-unionists. But the difficulties that can arise, particularly in the less highly organised sectors, contrihute towards the need to consider whether voluntary dismissal procedures should be supplemented, or indeed superseded, hy statutory machinery.

(C) Statutory machinery to deal with dismissal cases

145 Is voluntary improvement and extension of internal and external procedures enough? Or is there a need for some statutory authority to which a worker could appeal against arhitrary dismissal—for example some sort of labour court, like those which (as we have seen) deal with dismissal questions in some other countries? It may help to clarify this issue if, without prejudging the question of its desirability, we first discuss what form any statutory machinery

might best take, what remedies it might provide, and what its scope should be. Three main questions arise:

(1) Should statutory machinery incorporate
(*a*) an official charged with conciliation duties,
(*b*) some form of impartial tribunal,
and if both formed part of it, what should be their relationship to one another?

(2) What should be the remedy for a dismissal found to be unjustified—e.g. compensation or reinstatement?

(3) Should any such machinery extend over the field of employment generally or only those parts of it where voluntary procedures do not provide adequate protection against arbitrary dismissal?

Form of statutory machinery

146 There are two factors which we think particularly significant in deciding what form statutory machinery might best take: the need for flexibility and the importance of conciliation. On the second point, we consider that if dismissal cases are to be dealt with satisfactorily conciliation is of the greatest importance and provision for this should be built into any statutory arrangements. Informal talks with the employer and worker concerned, during which the matter can be thrashed out and the parties given an opportunity to reconsider and, perhaps, to suggest solutions themselves, are more likely to produce an all-round satisfactory settlement than (for example) a quasi-judicial hearing alone. We have been impressed by the apparent value of the conciliation role played by the chairmen of both the labour courts in West Germany and the *conseils de prud'hommes* in France. In our view a similar conciliation role ought to be an essential part of any statutory machinery dealing with dismissals in this country.

147 We therefore consider that any statutory machinery should incorporate a statutory official to whom a worker aggrieved by dismissal could refer his complaint. The statutory official would investigate the matter quickly and informally on the spot and act as a conciliator where appropriate. The work would properly fall to the Ministry of Labour.

148 We would hope that the work of the statutory official would lead to many cases being settled by mutual agreement. But where he was unable to resolve the issue and either party wished to take the matter further, we consider there should be a procedure for referring it to an impartial tribunal. The fact that the statutory official had already tried to conciliate should by no means debar the tribunal from attempting conciliation also. Indeed, we think it important that it should, and that it should include representatives of employers and workpeople whose presence might help the tribunal to achieve a settlement by agreement between the two parties even if this had not proved possible before. The tribunal should also be able to call on the statutory official to give a factual account of his investigations and his attempts to conciliate.

149 We consider it essential that the tribunal should be given the maximum flexibility in reaching its decisions. In our view the question whether a particular dismissal was justified or not is best decided in the light of custom and practice in the firm, trade or industry (including relevant provisions in any collective agreements that may be applicable); the circumstances of the individual case;

and the application of common sense and ordinary fairness. It is of course generally accepted—as may be seen from the Termination of Employment Recommendation*—that certain reasons for dismissal should not be regarded as valid, such as race, colour or creed. But we do not think it would be either desirable or practicable to attempt to draw up rules of universal application, suitable to all forms of employment, as to what justifies or does not justify dismissal. We therefore consider that if legislation were to set up tribunals to deal with dismissal cases, it should leave them the widest discretion and not attempt to lay down detailed rules as to what is a justifiable dismissal and what is not.

150 It might seem natural to use for this purpose existing bodies such as the Industrial Tribunals which deal with disputes about rights to redundancy payments under the Redundancy Payments Act and other matters. These consist of a legally qualified chairman and one representative each of employers and workpeople. Redundancy questions have many features in common with dismissal questions and might be closely linked with them in particular cases (e.g. where it was disputed whether the reason for dismissal was redundancy or, say, misconduct and, if the latter, whether or not dismissal was justified). We would therefore consider the Industrial Tribunals more suitable than, for example, the Local Tribunals which hear appeals concerning entitlement to benefit under the National Insurance Acts.

151 But we do not think it should be assumed that the Industrial Tribunals are the right bodies. It may be that a new and rather different body is needed. We have already emphasised that conciliation should play an important part in the work of tribunals dealing with dismissal cases and that they should be given a wide discretion. Their functions would therefore be different from those of the Industrial Tribunals, which have no conciliation role and are concerned with applying statutory provisions—including provisions of (for example) the Industrial Training Act and the Selective Employment Payments Act, as well as the Redundancy Payments Act. This difference of function might also affect the choice of a chairman. Chairmen of the Industrial Tribunals, as we have said, are legally qualified, but we see no reason why the chairmen of tribunals dealing with dismissals should not include other independent persons—indeed there might well be advantage in this. In the example of the *conseils de prud'hommes*, there is no independent chairman but simply representatives of employers and of workers, taking the chair in turn.

Remedy for unjustified dismissal

152 As we have said (paragraph 148), we would hope that tribunals would in many cases be able to persuade the parties to agree on a settlement of the matter between themselves. But where a tribunal could not do this and considered the dismissal unjustified, what remedy should it award the worker? In our view, where both parties can agree to reinstatement† that is generally the best outcome. Reinstatement is often what the worker wants and is particularly important in some cases where allegations of victimisation for trade union activities play a part. But to give the tribunals power to award reinstatement would be a complete departure from the traditions of the courts of law in this country and would raise

* See paragraph 4.

† See footnote to paragraph 130.

difficult practical problems. For example, what power would they have to ensure that their award was observed and that some pretext was not found to dismiss the worker again; and what would happen in cases where the circumstances of the dismissal had caused ill feelings between the worker concerned and others (whether his supervisor or other members of management, or indeed other workers) so that his return led to continuing disputes and bad relations? We would therefore conclude that if a tribunal considered a dismissal unjustified but was unable to bring about reinstatement by mutual agreement, it should award the worker compensation.

153 This would raise the question whether a scale of compensation which the tribunal could award should be laid down. We have emphasised the need to give tribunals maximum flexibility, and clearly considerable discretion would be needed on this point. Nevertheless we think it would be wrong for tribunals to be given no general guidance at all, particularly in this new field. Fixing compensation fairly is a difficult matter, and to leave it entirely at large could lead to very wide variations in the sums awarded by different tribunals in broadly similar cases.

154 An obvious precedent would be an adaptation of the scale of compensation for redundancy under the Redundancy Payments Act, which takes full account of the worker's "investment" in his job, as reflected in his length of service, and of his age and earnings. (Employers would not, however, be able to reclaim a substantial part of the payment from a central fund, as they can in the case of payments under the Act; on the other hand it is the employer's responsibility if arbitrary or unwarranted dismissal occurs, whereas redundancy is generally due to circumstances outside his control.) It can be argued, however, that it would be wrong to use a scale which took no account of the consequences of dismissal in individual cases, e.g. the difficulty of finding another job or the stigma which unjustified dismissal for such reasons as incompetence or misconduct may impose on the worker. Further, an adaptation of the Redundancy Payments Act scale might leave too little scope for adequate compensation in the case of workers without much length of service. Other factors, too, would need to be considered. Where a tribunal found against an employer, it might nevertheless consider that the fault was not all on one side and might wish to take this into account in its award. In fixing the amount of compensation the tribunal would have the advantage of the knowledge of the circumstances obtained in its attempts to secure a settlement by agreement. If tribunals with powers to award compensation were to be introduced we think it would probably be necessary to devise a suitable range of payments (taking account of the employee's age, length of service and earnings), or at least an overall maximum payment, within which they would have discretion to operate. We do not, however, recommend any specific scale, range or maximum. In further consideration of this question, practice in other countries might be relevant.

Scope of statutory machinery

155 Should any statutory machinery be general in scope—i.e. should its jurisdiction extend over the whole area of employment—or should it be confined to those sectors where voluntary procedures do not exist or do not offer effective protection?

156 Much the most important advantage of general machinery—and it is an attraction which must not be under-rated—is that it would put beyond doubt the right of every employee to a fair hearing of any appeal he wished to make against dismissal. This would be perhaps the most effective guarantee possible that justice is done and is seen to be done in this matter. Foreign experience (e.g. in West Germany) shows that a labour court system can cope with dismissals in a way which is generally felt by those concerned to make a real contribution towards good industrial relations.

157 A further advantage, it can be argued, is that in so far as independent persons as well as representatives of employers and workers played a part in statutory machinery, this would give greater assurance that the decisions on dismissal cases were impartial and were seen to be impartial. But general statutory machinery is not necessarily superior to voluntary procedures in this respect. Our industrial relations system recognises the value of recourse to an independent element in certain circumstances, e.g. in conciliation and arbitration. But this does not mean that it is always necessary for someone unconnected with either side of industry to play a part in resolving disputes, over dismissal or anything else. The important point is that procedures should allow a dispute to come, when it cannot be settled at the place where it arises, before people who are remote enough from the immediate circumstances to be able to consider the matter impartially. In the vast majority of disputes handled by external procedures, this function is satisfactorily fulfilled by representatives of employers and workers unconnected with the circumstances of the particular dispute. The independent element comes in, by way of conciliation or arbitration, only in the few cases where further assistance is needed. We note, too, that the Termination of Employment Recommendation* recognises bodies established under a collective agreement, equally with neutral bodies, for the hearing of appeals against dismissal. We do not consider, therefore, that the possibility of having a built-in independent element in statutory machinery necessarily tells in favour of such machinery as against voluntary procedures. In saying this we have no intention of detracting from the well-known advantages of incorporating into voluntary procedures some recourse to an independent element where necessary.

158 The main argument against general statutory arrangements is that they would cut across and undermine existing voluntary procedures. It might indeed be necessary for dismissal cases to be excluded from the scope of voluntary procedures, in order to prevent the same case being raised under both these and the statutory machinery. Alternatively, if decisions under voluntary procedures were made subject, in effect, to appeal before the statutory machinery, this would greatly reduce the incentive for all concerned to make the best use of the voluntary procedure and achieve a satisfactory result through it. General statutory machinery could reduce the incentive to develop new or improved voluntary procedures, which we see as the best way of improving protection against arbitrary dismissal. Despite the considerations set out in paragraph 156, therefore, it is our view that if any statutory machinery is set up, it should apply only where no satisfactory remedy was available through voluntary procedures.

159 How should the question be settled in a particular case—whether there is an adequate voluntary procedure or whether there should be access to the

* See paragraph 4.

machinery? In our view this should be decided by the Minister of Labour, having regard primarily to whether procedures were agreed between the employers and trade unions concerned. We would envisage that if and when it was decided to introduce statutory machinery, the Minister would announce that it would operate as from a specified date some way ahead and that he would consider applications for exemption from it in the meantime. Where a joint application for exemption was made to the Minister in respect of a particular procedure, he would grant exemption if he was satisfied that the procedure provided adequate safeguards. Exemption would mean that the statutory machinery was not available to those employed in establishments covered by the procedure in grades to which the procedure applied.

160 We think there should be provision for exemption to be sought for either internal or external procedures. There would be nothing to prevent an employer from continuing to operate an internal procedure without seeking exemption for it—for example, there would be no point in seeking such exemption if the workers concerned were already covered by an exempted external procedure. But in industries where there was no exempted external procedure, an employer with a satisfactory internal procedure might well wish to obtain exemption for it; and if the trade union or unions concerned were prepared to participate in a joint application with the employer and the Minister was satisfied that adequate safeguards were provided, we think exemption should be granted.

161 We do not think it would be practicable to lay down detailed criteria for judging whether or not a procedure provided adequate safeguards. Such an approach would raise serious difficulties of definition. Moreover, the way safeguards can best be provided will vary in different cases. Assurance that the procedure was adequate would rest mainly on the fact that it was agreed between the two sides. We would suggest that the main factors on which the Minister would need to be satisfied should be that the procedure covered all relevant types of dismissal and that the organisations party to it were adequately representative of the employers and workers concerned. The Minister could review the exemption if he received complaints that the procedure was not giving satisfactory safeguards, either from a party or from individuals.

162 What would be the right way to deal with cases where there was an exempted external procedure in the industry but the employer concerned was not a member of an employers' organisation that was party to the procedure, or the worker concerned was not a member of a trade union which was party to it (either itself or through membership of an organisation such as a confederation of trade unions)? In discussing this we can ignore establishments where there is an agreed *internal* procedure which has been granted exemption and can handle the matter; where that is so, the exempted internal procedure should be used and statutory machinery should not be available. Subject to that exclusion, there are three combinations to be considered:

(1) The employer *is not* a member of an appropriate employers' organisation but the worker *is* a member of an appropriate trade union.

(2) The employer *is not* a member of an appropriate employers' organisation and the worker *is not* a member of an appropriate trade union.

(3) The employer *is* a member of an appropriate employers' organisation but the worker *is not* a member of an appropriate trade union, though eligible for membership of such a union.

163 In both (1) and (2) we consider that unless the employer can arrange for the industry's procedure to handle the case (see paragraph 142) the worker should have access to the statutory machinery. It would clearly be wrong that a worker should be unable to have his case considered either under the exempted external procedure or through the machinery, because his employer chose not to be a party to the former.

164 Greater difficulties arise over (3). We have recognised in paragraph 143 the force of the view that every worker should have a right as an individual to appeal against dismissal, whether he is a trade union member or not. On the other hand serious problems might arise if non-members were allowed to use the statutory machinery in the circumstances described in (3). To provide automatic access to it for non-unionists only would be clearly unacceptable. That would have damaging implications for trade union membership and could seriously undermine support for voluntary procedures. In our view, however, the development and extension of voluntary procedures provide the best means of protection against arbitrary dismissal. Far from improving the protection available to workers in general, therefore, the effect would be to diminish it. We therefore consider on balance that workers in the circumstances described in (3) should not be given access to the statutory machinery.

165 We recognise, however, that this may cause difficulties in individual cases. These can be demonstrated by considering what would happen if, after statutory machinery had been introduced, a voluntary procedure was agreed and exemption applied for, where there had been no agreed procedure before. If exemption was granted, non-union members in firms and grades to which the procedure applied, who would previously have had access to the statutory machinery, would have it no longer—though they would have the opportunity, by joining the union, of obtaining instead the protection of an external voluntary procedure which the Minister had approved for exemption. There could also be cases where a worker in an industry which had an exempted external procedure was a member of a trade union whose membership lay mainly in other industries and which was not party to the procedure concerned; in practice such difficulties can often be overcome—e.g. by reciprocal arrangements between unions. Because of these possible difficulties in individual cases we consider that the Minister should take this problem into account in deciding whether to grant a procedure exemption and should require to be satisfied that suitable arrangements to overcome such difficulties had been made.

166 Workers not eligible for membership of any trade union party to an exempted procedure should clearly be allowed to use the statutory machinery.

167 We envisage that when the statutory official received a complaint about dismissal, he should first establish whether there was an exempted procedure the parties to which included the employer (or an employers' organisation of which he was a member) and the worker's trade union or a union for membership of which he was eligible. If so, the statutory official would not accept the complaint but would advise that it should be raised under the voluntary procedure. Before accepting a complaint he would also need to satisfy himself whether any other conditions of access to the statutory machinery were fulfilled—e.g. any length of service qualification (see paragraph 174(c)). Further, the circumstances of a dismissal might be such as to give rise to the possibility of a prosecution or a civil action, or to a dispute over entitlement to a redundancy payment or to

unemployment beuefit. Depending on the circumstances, it might well be necessary in such cases for the statutory official not to make any investigation or take otber action until any such questions had been resolved.

The case for and against statutory machinery

168 Having set out our views on the form of any statutory machinery, tbe remedy it migbt provide and its scope, we now go on to consider whether or not the setting up of sucb machinery is on balance desirable.

169 The case for statutory macbinery rests principally on the need to improve the safeguards available to workers not within the scope of voluntary procedures. In our view satisfactory internal procedures are not common enough, while external procedures are of limited value in this field; in particular, in the less highly organised sectors of employment there may be no effective redress against arbitrary dismissal, whether through internal or external procedures. We have recommended tbat tbe development of voluntary procedures should be encouraged and we hope that this process will more and more fill the gaps whicb exist at present. But this is bound to take time, particularly in the smaller firm and in tbe less highly organised sectors of employment, wbere the need is greatest. Tbe type of statutory machinery whicb we consider most suitable would provide protection at the point where it is most needed—where voluntary procedures do not give satisfactory safeguards. This would be a great step forward.

170 Perhaps the main argument against sucb machinery is that it could lessen the incentive to develop satisfactory voluntary procedures, both internal and external, wbere these do not already exist.

171 Another point—which we also consider important—is that statutory machinery might have the effect of importing a legalistic element into industrial relations in the place of work. The difficulty can perbaps be seen most clearly in the case of dismissal for unsuitability or inefficiency. If the worker challenges such a dismissal, how is the employer to prove his case? However good his reasons for dismissal, he might well find it very difficult to point to specific and unchallengeable illustrations of them. As a result employers and supervisors might feel obliged to keep "black books" of workers' misdeeds or shortcomings, so as to have evidence if a man was dismissed and appealed. The effect on tbe general climate of industrial relations could only be bad. We were informed tbat such tendencies have in fact been noticed in cases where procedures are over-legalistic.

172 Closely related to this is the possibility that statutory machinery might tend to weaken industrial discipline and, in particular, undermine the authority and confidence of the supervisor. It is difficult to be precise about how far this might happen, but we have no doubt that the danger exists. If supervisors and junior management found that their disciplinary decisions were reversed by an outside body on appeal, they would feel this sbowed them in an unfavourable light in senior management's eyes and would adopt a more cautious policy (particularly if successful appeals led to the award of large sums of compensation). To some extent, of course, this would be salutary, but the tendency could easily go too far—as has perhaps happened in some otber countries. It is not irrelevant that we were informed that a number of attitude surveys bave shown that workers tend to consider discipline in their places of work too lax rather than too strict.

173 The question would also arise what should be done about strikes over dismissal if statutory machinery was set up. It may well be thought that if a worker who felt he had been dismissed unjustly had the right to appeal to a statutory authority, it is unreasonable that his fellow workers should retain unimpaired their right to strike in protest against the dismissal—or against the findings of the tribunal, in cases where the dismissal was upheld. Moreover the statutory machinery might become discredited if those dissatisfied with its results remained free to resort to industrial action. On the other hand it can be argued that it would be for the individual worker to appeal through the statutory machinery against his dismissal and that his right to do this—or to decide not to do so—would be no reason for withdrawing the right of his fellow workers (who would not themselves be party to the statutory arrangements) to take collective action if they felt the situation warranted it. This is a difficult and controversial question, but in our view it is one that would have to be faced and decided if statutory machinery were set up, for experience suggests that this would not in itself remove the possibility of industrial action over dismissals.

174 There are three final points:

(*a*) The opportunity to obtain compensation from a tribunal might lead to pressure from workers for the abandonment of existing voluntary procedures in favour of the statutory machinery.

(*b*) The cost of statutory machinery cannot be ignored—though against this might be set the savings to industry and the country which could be expected from that improvement in general industrial relations which a better way of dealing with dismissal questions ought to produce.

(*c*) In those sectors where statutory machinery applied, the feeling that there was nothing to lose by appealing might stimulate a flood of ill-founded appeals. This could throw a heavy burden on the statutory officials and on the members of tribunals. The tribunals might be empowered, in cases where either party had acted frivolously or vexatiously, to disallow his expenses and/or award costs against him (as the Industrial Tribunals are); but they would probably be reluctant to use this power except very infrequently. In our view a more effective—and well justified—safeguard would be to limit access to the machinery to the worker who has been in his job for a certain length of time. We think this would be right; it is the longer-service worker who has most at stake in his job and would value protection against arbitrary dismissal most highly. A length of service qualification would also much reduce the risk that statutory machinery might be overwhelmed with cases, particularly those arising from dismissal for unsuitability. One possibility would be the length of service qualification laid down in the Redundancy Payments Act—a minimum of two years' continuous service with the employer. But on balance, we feel that the length of service qualification for initial rights to notice under the Contracts of Employment Act—six months—would be more appropriate where safeguards against arbitrary dismissal are concerned.

175 These considerations provide strong arguments against the introduction at an early date of legislation to provide for statutory machinery. We consider the immediate programme should be to encourage the development and extension of satisfactory voluntary procedures. But we recognise that progress may well be slow, particularly in the less highly organised sectors of employment, and that

changes in our present system of industrial relations—such as might result from the report of the Royal Commission on Trade Unions and Employers' Associations—might lessen some of the difficulties which we see in statutory machinery. We therefore consider that the Minister of Labour should in due course review the position—in particular the need for and progress towards satisfactory procedures. Pending consideration of what further action may be desirable, a more active role might be assigned administratively to the Ministry's Industrial Relations Officers, both in advising on the establishment of internal dismissal procedures and by undertaking normal conciliation duties in dismissal cases—i.e. providing what is an existing service but one which could be developed by being more widely advertised. Action on these lines would provide information and experience which would be of value when the time came to review the position.

IV. Summary and Conclusions

176 Our terms of reference asked us to consider points on which information should be collected about dismissal procedures, establish what would be the basis of a satisfactory procedure and consider the promotion of such procedures in industry generally.

177 Our enquiries into the present position in this country are described in Part I. We found it necessary from the first to distinguish between internal and external voluntary procedures. Briefly, the information we collected indicated that though formal internal procedures are fairly widespread among large firms and general in the public sector, in a very large number of firms (including the vast majority of small firms) they do not exist. In most industries, however, there are external procedures (usually identical with the industry-wide procedure for settling disputes) which can handle disputes over dismissal. In practice, appeals under internal procedures are generally to a higher level of management, with very few being made and only a minority succeeding; cases taken up under external procedures are generally heard by joint bodies of employer and trade union representatives unconnected with the particular dispute, and again very few dismissal cases are dealt with. The main value of voluntary procedures therefore seems to be as much preventive as remedial. Our enquiries also shed light on the main strengths and weaknesses of both internal and external procedures in relation to dismissal cases.

178 We then considered safeguards against arbitrary dismissal in some other countries (West Germany, France, the U.S.A., Italy and Sweden). The information we obtained is set out in Part II. It showed that the provision of safeguards varies widely. West Germany relies entirely, and France very largely, on statutory arrangements; in Sweden, the U.S.A. and Italy protection depends mainly on collective agreements. It appears that the effectiveness of similar forms of protection varies between different countries, and it is always necessary to view a country's dismissal arrangements in the light of its general industrial relations system. Similar arrangements can also produce different problems when seen against different backgrounds. But foreign experience seems to include examples of satisfactory systems resting both on legislation (as in West Germany) and on collective agreement (as in Sweden).

179 In the light of the information we collected, we have considered in Part III how satisfactory procedures may best be promoted in industry generally. We found it best to examine this question under three main headings; internal voluntary procedures, external voluntary procedures, and the case for and against statutory machinery.

Internal voluntary procedures

180 We consider the best way to improve safeguards against arbitrary dismissal in this country is by the extension of satisfactory internal procedures. These have the great advantages of being simple, inexpensive and quick.

181 We do not think it possible to lay down a standard form of internal procedure suitable in all circumstances. But there are certain important features, set out in paragraph 124, which we think should as far as possible form parts of all internal procedures. These may be summarised as follows:

First, steps that should be taken before dismissal is decided on. Both workers and management at all levels should know and understand the procedure, and management should take positive steps to ensure this. After probation, a worker whose performance becomes unsatisfactory should not be dismissed without having been given fair warning and opportunity to improve. The decision whether to dismiss should not rest solely in the hands of one individual and it is often best taken at a level of line management higher than the immediate supervisor (in consultation where necessary with the personnel department). Decisions on dismissal should not be taken hastily or without the facts of the matter having been fully established, and where necessary the worker should be suspended pending a decision rather than instantly dismissed. There are advantages in management's consulting an appropriate trade union representative before taking a decision. Before any decision to dismiss is made, the worker should have the chance to state his side of the case personally, with assistance (e.g. from his trade union representative) if he wishes.

Secondly, after dismissal has been decided on. The worker should be told the reason for dismissal clearly and frankly. He should always be able to appeal against dismissal, with assistance if he wishes, and the hearing of the appeal must be impartial and be seen to be impartial. If appeal is to a higher level of management, the person hearing the appeal should be far enough removed from the immediate circumstances of the case to be able to consider the facts without bias, and he must rid his mind of any feeling that it is his duty to support the actions of subordinate levels of management irrespective of the rights and wrongs of the case—nor must he give any appearance of acting in that way. Finally, every effort should be made to ensure that the procedure works quickly and without undue formality.

182 We have also noted in paragraph 125 certain other points which we think should be considered by those concerned with internal procedures.

183 Among the important features of a satisfactory internal procedure, we would single out the following as indispensable:—all concerned must know and understand the procedure; in all appropriate cases the trade union representative should be consulted; the decision should be taken be taken at a level above the immediate supervisor, in the light of a full investigation of the facts; and there should always be a right of appeal to someone who is impartial and is seen to be impartial.

184 *Small firms.* We recognise that, in small firms particularly, there may be practical difficulties about establishing a procedure which includes these features, especially the last two. Where, however, the firm is covered by an external procedure, this will normally give opportunity for the trade union to bring the matter before people unconnected with the matter. We should like to see it known and understood by all concerned in the small firm that no decision to dismiss should be taken hastily, without all the facts having been established or without the worker having been given the chance to improve his performance, where appropriate; that the worker should have the chance to state his side of the case, with

assistance if he wishes; that in all appropriate cases his trade union representative should have full opportunity to discuss the matter with management and the worker before a decision is taken; and that a dismissed worker should be given the reason for dismissal clearly and frankly.

185 *Joint internal procedures.* These are rare in this country. We recognise the value joint advisory procedures can have in ensuring proper consultation and sympathetic consideration of the worker's side of the case, but consider that joint decision-making procedures could raise problems—though employers and trade unions are of course free to agree on them if they wish.

186 *Recommendations on internal procedures.* We recommend strongly that the development of satisfactory internal procedures, and the improvement of existing procedures, should be encouraged—by the Ministry of Labour, by the C.B.I. and T.U.C. and their member organisations, and by individual managements (including managements in the public sector), in the different ways open to them.

External voluntary procedures

187 The purpose of external procedures is to deal with questions which cannot be settled within the firm or establishment. Most industries have agreed disputes procedures which can deal with dismissal cases. They do not always end in agreement, but where agreement is reached the result is almost invariably accepted and not infrequently the procedures lead to reinstatement.* In practice most deal with very few dismissal cases, and the delays that are sometimes inevitable may mean that such a case lapses without having been properly settled. They cannot, therefore, take the place of satisfactory internal procedures. But they can be and are a very valuable supplement to internal procedures, especially as they give an opportunity for the matter to be considered by people unconnected with the particular circumstances of the case—a particularly important point in disputes arising within small firms. Circumstances are different in single-employer industries (such as some of the nationalised industries) but in this area internal procedures frequently incorporate safeguards that can do much to ensure objective consideration of dismissal questions, including appeals against dismissal.

188 *Special arrangements.* We have considered the value of special arrangements for dismissal cases, designed to enable them to be dealt with by external procedures more quickly and informally. An arrangement which merits consideration is for dismissal cases which cannot be settled within the firm or establishment to be jointly investigated at short notice on the spot by representatives of both sides of the industry who have no connection with the case. One or two industries already have arrangements of this general character. We do not consider that rules can be laid down about this, but we think such special arrangements have considerable attractions in expediting the handling of dismissal cases under external procedures.

189 *Non-members.* External voluntary procedures are not available to non-members of trade unions nor to those employed by non-federated employers. In the latter case, we think the parties to external procedures might consider the possibility of allowing their procedure to be used to settle dismissal questions arising in non-federated firms (as it can be in, for example, the building

* See footnote to paragraph 130.

industry), subject to any necessary conditions and, if they wish, charging the firm concerned an appropriate fee. This is, of course, entirely a matter for the parties to the procedure to decide. In the former case, while not disputing the need for every worker to have the right of appeal against dismissal, we think it not unreasonable that as far as voluntary external procedures are concerned, a worker who chooses not to be a trade union member should forfeit their protection as regards dismissal just as he forfeits other forms of protection by the union. We recognise, however, that special problems arise in the less highly organised sectors of employment where it may not be easy to obtain trade union protection.

190 *Recommendations on external procedures.* We recommend that all industries should be encouraged to develop voluntary procedures, external to the firm, capable of handling dismissal cases satisfactorily and of allowing them to come before people unconnected with the particular circumstances of the case. Industries should review their established procedures to ensure that they can deal with dismissals expeditiously and to see whether there is a need for special arrangements. Those few industries which have no procedure, or whose procedure is restricted in the types of dismissal cases it can handle, should make every effort to establish procedures or to remove such restrictions. As we have recognised, however, special considerations apply in the case of single-employer industries.

The case for and against statutory machinery

191 We have considered whether, besides encouragement of the development and improvement of voluntary procedures, there should be statutory machinery to which a worker could appeal against arbitrary dismissal—particularly in cases where the worker cannot obtain access to an external voluntary procedure.

192 We first examined what should be the form and scope of any such machinery, if it was set up, and what remedies it should provide. In our view the need for flexibility and the importance of conciliation are paramount in this context, and it would also be vital not to undermine voluntary procedures. We therefore consider that any statutory machinery should make provision for exemption to be sought for agreed voluntary procedures, whether internal or external, by a joint approach to the Minister of Labour, in respect of employees in the establishments and grades to which the procedure applied. Besides the requirement that the approach should be a joint one, before granting exemption the Minister would, we suggest, need to be satisfied that the procedure provided proper safeguards—in particular that it covered all relevant types of dismissal, that the organisations party to it were adequately representative of the employers and workers concerned, and that there were suitable arrangements to overcome certain difficulties which might arise over non-members.

193 We envisage that a worker aggrieved over dismissal who could satisfy an appropriate length of service qualification might be able to take his case first to a statutory official, who before accepting it should satisfy himself that there was no exempted procedure which was applicable. If satisfied, he would make immediate enquiries on the spot and attempt to conciliate if appropriate. If unable to resolve the matter, he should refer it to a tribunal with an independent chairman and one representative each of employers and workers. As it

would not be concerned with interpreting detailed statutory provisions like the present Industrial Tribunals it might need to be constituted differently from them. It should approach its task as essentially one of conciliation and it would need a very wide measure of discretion. If the parties still could not be brought to agree on a settlement, the tribunal should have power to award compensation if it found the dismissal unjustified. The tribunal should have discretion over the amount but it would be necessary to give some guidance—e.g. in the form of a range of payments, taking account of such factors as the employee's age, earnings and length of service and the consequences of dismissal, or perhaps in the form of an overall maximum.

194 We then considered whether such machinery is on balance desirable. A most important argument in its favour is the need to improve the protection of workers in the less highly organised sectors of industry, where the development of satisfactory voluntary procedures is bound to be a slow process. But there are serious objections to it. It could lessen the incentive to develop voluntary procedures, and some undermining of existing procedures might be unavoidable; it might well bring a legalistic atmosphere into work-place relations, and weaken the authority of management (particularly the supervisor); and it would raise difficult questions as to what should be done about strikes over dismissals. Moreover, such information as we were able to obtain about the extent of the problem in the less highly organised sectors did not produce evidence of large numbers of unjustified dismissals or of workers with grievances over dismissal.

195 *Recommendations on statutory machinery.* These considerations provide strong arguments against the introduction at an early date of legislation to provide for statutory machinery. We consider the immediate programme should be to encourage the development and extension of satisfactory voluntary procedures. But we recognise that progress may well be slow, particularly in the less highly organised sectors of employment, and that changes in our present system of industrial relations—such as might result from the report of the Royal Commission on Trade Unions and Employers' Associations—might lessen some of the difficulties which we see in statutory machinery. We therefore consider that the Minister of Labour should in due course review the position—in particular the need for and progress towards satisfactory procedures. Pending consideration of what further action may be desirable, a more active role might be assigned to the Ministry's Industrial Relations Officers, both in advising on the establishment of internal dismissal procedures and by developing their conciliation work in dismissal cases. Action on these lines could provide information and experience which would be of value when the time came to review the position.

196 We wish to express our lively appreciation of the great assistance rendered to our Committee throughout its proceedings and also in the preparation of this report by our Secretary, Mr. R. S. Allison, and our Assistant Secretary, Mr. K. N. Atkinson.

ESTIMATES OF DISMISSALS FROM EMPLOYMENT IN GREAT BRITAIN

Some very rough estimates of the incidence of dismissals, by type, were made for the Committee as background information to their discussion. There is no systematic collection of information of this kind and, moreover, there are difficulties in classifying terminations of employment on an objective basis. Consequently there is no claim to precision for the estimates given below and in paragraph 7 of the Report. They are merely intended to indicate the broad order of magnitude of the number of dismissals of various types per year.

Total numbers of terminations and dismissals

2 Employers notify the Inland Revenue when the employment of a worker subject to P.A.Y.E. tax is terminated. Excluding deaths, the annual number of terminations is of the order of 10½ to 11 million. There are large numbers of workers who only seek work for limited periods, many instances where workers are engaged for limited rather than indefinite periods, and others of interrupted employment with the same employer where the end of each period is regarded as a termination. It is a matter of definition whether in these cases terminations should, according to circumstances, be regarded as dismissals.

3 The majority of terminations are voluntary ones. This was confirmed by the Labour Mobility Survey made in 1963 by the Government Social Survey on behalf of the Ministry of Labour (Report SS 333) in which employees interviewed were asked to give reasons for termination of jobs. It seems reasonable to assume that dismissals represent about 25 to 30 per cent of all terminations. This gives an estimated total of about three million dismissals per year.

Reasons for dismissal

4 In many cases the reasons for dismissal are complex and are not easy to determine. Nevertheless dismissals can be considered under the broad headings of redundancy, misconduct, unsuitability, sickness or incapacity, and involuntary retirement.

5 *Redundancy.* Including cases where the employment had been of a temporary or short-term nature, we estimate that redundancy may well account for between 750,000 and 1 million dismissals per year*.

6 *Misconduct.* On average about 200,000 workers who have ostensibly lost their jobs as a result of misconduct register for employment at Employment Exchanges during a year. It is, however, possible that in some cases dismissal for misconduct is represented as dismissal on other grounds, in order not to prejudice the worker's claim to unemployment benefit. Also some dismissed workers do not register—for example, those who move direct to other jobs. It is estimated that between 333,000 and 500,000 dismissals per year result from misconduct.

7 *Sickness or incapacity.* Employment is often terminated after a worker has been off work on account of sickness or incapacity for a period, even though he will be re-engaged on recovery. Such terminations rank as dismissals. On the assumption that most workers have their employment terminated after sickness absence of between 1 and 3 months, Ministry of Social Security sickness records indicate that there may be nearly 1 million dismissals per year on sickness grounds.

8 *Involuntary retirement.* In a survey in 1954 undertaken by the Ministry of National Insurance, over a quarter of men but under 5 per cent of women retiring at the minimum pensionable age regarded their retirement as involuntary. This suggests that between 50,000 and 100,000 retirements each year might rank as dismissals.

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* This figure is of course entirely different from the number eligible for redundancy payments under the Redundancy Payments Act, the qualifying conditions for which include two years' continuous service with the employer.

9 *Unsuitability, etc.* It has not been possible to make separate estimates of dismissals for other reasons, including unsuitability, and so these are treated as a residual which will include the effect of errors in the estimates of the total and the above categories.

10 *Summary.* The summary of these annual estimates is:

Type	*Estimate per year*
Redundancy	750,000–1,000,000
Misconduct	333,000–500,000
Sickness (including those later re-engaged)	nearly 1,000,000
Involuntary retirement	50,000–100,000
Unsuitability, etc.	500,000–750,000
Total	about 3,000,000

Appendix 2
(see paragraph 9)

Analysis of stoppages of work attributable to dismissal in circumstances other than redundancy: yearly averages for period 1964–66

Reason for dismissal* (1)	No. of stoppages (2)	No. of workers directly involved (to nearest 100) (3)	Working days lost by all workers involved (to nearest 1,000) (4)
1 Bad time-keeping and related faults	20	2,900	11,000
2 Time-card irregularities	3	300	1,000
3 Refusal to undertake a particular job	18	3,800	15,000
4 Refusal of another type of foreman's or supervisor's order	18	2,800	18,000
5 Other disciplinary causes	44	11,000	59,000
6 Alleged incompetence	30	5,200	28,000
7 Cause not known	71	13,800	46,000
All reasons	203†	39,700†	178,000

* Dismissals known to be due to trade union activities are excluded.
† Owing to rounding of averages the sum of the items differs from this total.

Appendix 3
(see paragraph 10)

Stoppages of work attributable to dismissal in circumstances other than redundancy, distinguishing those where dismissal arose from trade union activities: period 1964–66

Year	No. of stoppages			No. of workers directly involved*			Working days lost by all workers involved*		
	(1) due to dismissal not known to have arisen from trade union activities	(2) due to dismissal arisiog from trade union activities	(3) Total of (1) and (2)	(4) in stoppages under col. (1)	(5) in stoppages under col. (2)	(6) in stoppages under col. (3)	(7) in stoppages under col. (1)	(8) in stoppages under col. (2)	(9) io stoppages under col. (3)
							000's		
1964 . .	172	16	188	39,000	3,600	42,500	159	43	202
1965 . .	230	6	236	42,700	700	43,400	217	3	220
1966 . .	208	2	210	37,400	100	37,600	157	2	159
Total 1964–66 .	610	24	634	119,100	4,400	123,500	533	48	581
Yearly average 1964–66 .	203	8	211	39,700	1,500	41,200	178	16	194

* The figures have been rounded to tbe nearest 100 workers and 1,000 working days: the sums of the items may not, therefore, agree with the totals shown.

EXAMPLES OF FIRMS' INTERNAL DISCIPLINARY PROCEDURES

Example 1

In a rubber manufacturing firm with about 6,000 employees a joint Absenteeism and Disciplinary Committee (a sub-committee of the Works Council) considers cases of serious breach of discipline. The penalties it can award range from written reprimand to dismissal. The committee consists of four people—the head of the department concerned; a representative of the personnel department; the shop steward concerned; and the works convenor of the union concerned. The offender has an opportunity to state his case, and the decision of the committee must be unanimous. The employee can appeal against the committee's decision to the managing director or his representative (often the head of personnel in the company) but this right is rarely used.

No case is referred to the committee until the man concerned has been given two warnings. Foremen have no power to dismiss, but can suspend a man pending further investigation.

(*Note:* Very few other examples are known of this type of joint decision-making disciplinary committee.)

Example 2

A textile firm employing about 30,000 has issued the following statement of company policy on disciplinary procedure.

"1. The prime objective is to build up a relationship on a departmental basis as between supervision, operatives and Shop Stewards in order to maintain discipline by means that are both fair and reasonable to both management and workpeople.

"2. If and when discipline falls down, depending upon the degree of indiscipline, a man will be talked to or reprimanded by his supervisor in the department.

"3. Where the degree of indiscipline is such that it is considered that it cannot be handled on a departmental basis, the man concerned will attend at the Labour Office (as will also the supervisor concerned) and the Labour Officer will hear the full facts of the case from both the supervisor and the man. Due consideration will then be given to the case by management and a decision by them will be taken as to what action is deemed necessary.

"4. Depending upon the circumstances, such action could be:

(i) Case dismissed.
(ii) Verbal reprimand.
(iii) An officially recorded warning, or final warning.
(iv) Suspension from work of up to three days.
(v) Discharge with appropriate notice.
(vi) Summary dismissal.

"5. Depending on the nature of the alleged offence, the appropriate Shop Steward or Works Secretary may be brought into the investigation if he has any pertinent evidence he wishes to offer as a witness.

"6. In any event, where a 'charge' is going to be pressed in respect of an officially recorded final warning, a suspension, or a discharge, the defendant concerned will have the right to have his appropriate Shop Steward or Works Secretary present unless he desires otherwise (for example for personal reasons).

"7. In the case of an officially recorded final warning, a suspension or a discharge, the appropriate Shop Steward or Works Secretary (whether or not he has been present during the investigation) will be advised of the decision and all the known circumstances which led up to it.

"8. The Shop Steward or Works Secretary will in no way be asked to be a consenting party to the action to be taken and, if Management's decision is regarded as unjust or unreasonable, he will be entitled to pursue the question under the negotiating procedure.

"9. The whole emphasis of this procedure is on the positive rather than the negative approach, whereby the aim is to prevent indiscipline occurring by having good departmental relationships, but where indiscipline does occur, to deal with the situation with as much care and fairness as such situations deserve."

Example 3

A light engineering firm with 3,500 employees uses the following general statement of its procedure as a guide to management:

Stages in disciplinary action (italics)

1. Verbal warning given by	foreman	No official record is made.
2. First written warning,	signed by departmental foreman and Personnel Officer	A copy of the written warning is kept in the employee's file. If conduct has improved after 3 months the copy is destroyed Following discussion at the Works Committee it was agreed that the employee should be advised that he is to receive a warning, thus giving him an opportunity to ask his shop steward to make representation.
3. Final written warning	signed by departmental foreman and Personnel Officer	As in stage 2.
4. Dismissal by	foreman, with the knowledge of the Personnel Officer and Manager.	—

The firm feel any disciplinary procedure must be flexible enough to take account of the individual and the nature of the offence, and particular stages may occasionally be missed or duplicated as desirable. From Stage 2 the employee can be, and often is, represented by a sbop steward.

Appeals

The employee may appeal against the penalty in the following stages:

1. To his foreman: he may be accompanied by or represented by the shop steward.

2. Through the foreman to the Departmental Manager, again accompanied by the shop steward if he wishes.

3. Through the Manager to the Personnel Officer; sometimes the convener of shop stewards may go direct to the Personnel Officer.

4. Theoretically, the next step is an appeal to the Director although this rarely happens. It is accepted that the Personnel Officer has sufficient authority. After this stage, if the man and his Union still wish to appeal, the question goes into the normal engineering negotiating procedure.

Example 4

An engineering firm with some 22,000 employees operates the following scale of penalties for absenteeism and other disciplinary offences:

Written warning by head of department.

2. Second warning by head of department and shop steward or office manager and appropriate trade union notified.

3. Suspension.

4. Dismissal (but this is rarely invoked).

Works Appeal Procedure

A dismissed employee can appeal to an Appeals Committee, composed of a chairman who is the manager of another department, the works convenor of shop stewards and a representative of the personnel department. The findings of this committee are final.

Example 5

A firm of food manufacturers employing about 150 has the following disciplinary procedure:

A. *Timekeeping and Absenteeism*

Warning	*By*	*Action*
1. 1st verbal	Personnel Officer	Recorded on timekeeping card.
2. 2nd verbal	Personnel Officer	Recorded on timekeeping card.
3. 3rd verbal	Personnel Officer with Supervisor present	Recorded on timekeeping card.

Note: The Production Supervisor is frequently also present at the 1st and 2nd stage.

4. Dismissal	Personnel Officer	—

B. *Other Offences*

1. 1st verbal	Supervisor	Personnel Officer told and warning recorded on personal record.
2. 2nd verbal	Production Manager (after discussion with Supervisor)	Personnel Officer told and warning recorded on personal record.
3. 3rd verbal	Production Manager and Personnel Officer	Recorded on personal record.
4. Dismissal	Production Manager and Personnel Officer	—

Note: There is some flexibility as additional warnings may be given.

C. *Instant Dismissal*

It is customary for the Supervisor to report the employee to the Production Manager and Personnel Officer, either or both of whom may deal with the actual dismissal.

Appeals

The firm have agreed with the union that employees should have the following right of appeal—

(*a*) Union members: the man may either appeal by himself, accompanied by a trade union representative, or ask the union representative to act for him.

(*b*) Non-union members: the employee may appeal on his own, accompanied hy a "friend" or may ask the "friend" to act on his behalf.

Appeals then go through the following stages—

(*a*) To the Personnel Officer.

(*b*) To the Factory Manager.

(*c*) To the General Manager in the parent company (some 300 miles away).

Example 6

A tobacco firm has issued the following guidance to management and supervisors:

"BREACHES OF DISCIPLINE

"In a group where the rules and instructions are fair and reasonable and where a high standard of leadership exists breaches of discipline will be infrequent.

"1. Generally breaches of discipline can be classified under one of the following headings—

(*a*) Misunderstandings.

(*b*) Carelessness.

(*c*) Deliberate.

When you have to deal with a disciplinary matter you should—

(i) Establish which of the above categories it falls into.

(ii) Take steps to put the matter right and ensure that it will not recur.

(iii) Decide on the appropriate action to take by way of reprimand or punishment.

All these items should be dealt with promptly, but it is important that the action taken is taken with a full knowledge of *all the relevant facts.*

"2. *Punishments*

(*a*) Punishment fairly administered is a valuable aid to the maintenance of discipline; unfairly inflicted it is a hindrance. Excessive punishment is uneconomic, for instance discharge of a skilled employee may mean the loss of hundreds of pounds which have been invested in his training.

(*b*) The general rule in the Firm is that the more severe forms of punishment—discharge and suspension—may only be imposed by a member of the Management. Management may not be on the spot when the incident occurs, but will have to decide on the punishment. It is, therefore, of the first importance that Supervisors ensure they give the Management ALL the facts which relate to the case.

(*c*) It is impossible to lay down a scale of punishments which would be appropriate for every offence; however, once the 'cause' of the 'breach' has been classified the following notes may be helpful when deciding on the appropriate punishment.

(i) *Misunderstandings*

It is the responsibility of Supervision and Management to see that rules and instructions are framed in such a way that they are readily understood by employees. If an offence is committed because an instruction is misconstrued and on examination it is found that the instruction is ambiguous and could *genuinely* be misunderstood then normally it would be wrong to impose a punishment.

If an employee fails to read an instruction or does not read a clearly worded instruction properly, then the offence does not arise from a misunderstanding but from carelessness and should be treated accordingly.

(ii) *Carelessness*

First establish that the carelessness is on the part of the employee and not the Management or Supervision.

The severity of the punishment depends on the circumstances, for instance—

A first offence with only trivial consequences needs only a mild reprimand. Subsequent offences, even although the consequences are equally trivial, call for a more severe reprimand or, if frequently repeated, a more rigorous punishment. However, if the offences were separated by lengthy periods of time a mild reprimand on each occasion may be sufficient.

A first offence which has serious consequences for the product of the machinery, or disrupts the system of work—even if the consequences are averted by the action of some other person—requires a more serious reprimand or possibly suspension. Subsequent offences, even after a considerable lapse of time, may call for transfer to less responsible work, suspension or discharge. A first offence which endangers the safety of other employees will generally call for suspension or, in extreme cases, discharge. Subsequent offence will generally merit discharge.

(iii) *Deliberate*

When considering the punishment, account should be taken of whether the act was carried out in the heat of the moment or in cold blood. If the former was the case—or if there was some provocation—the punishment may be less severe. Nevertheless this is the most serious type of offence and will generally result in suspension or discharge.

"3. *Reprimands*

It is within the jurisdiction of every Supervisor to administer reprimands without reference to any other authority.

(i) They should be administered as soon as the facts of the incident have been established.

(ii) Make sure the employee clearly understands the nature of his offence and the consequences, and give him the chance to put forward any defence he has.

(iii) Ascertain what reprimands have been administered on previous occasions. If these have been coupled with a warning of suspension for future offences decide if a further reprimand does in fact meet the case.

(iv) If possible they should be given *out* of the hearing of other employees.

(v) They should not involve the use of sarcasm or ridicule.

(vi) Bad language or insulting words must not be used.

(vii) If a male Supervisor has to reprimand a female employee, then if possible the female Supervisor should be present.

(viii) If it is decided that the reprimand is to be coupled with a warning of more serious punishment for future offences, be satisfied that the person who will have to inflict the more severe punishment agrees with your view of the offence.

(ix) Enter on the record card that the reprimand has been given, together with the name of the person giving it and the date on which it was given and any other relevant information."

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MINISTRY OF LABOUR

Dismissal Procedures

Report of a Committee of the National Joint Advisory Council on Dismissal Procedures

LONDON
HER MAJESTY'S STATIONERY OFFICE
1967

Foreword

by the Rt. Hon. Ray Gunter, M.P., Minister of Labour

Most people in industry to-day recognise that workers need to have proper safeguards against unjust dismissal. We have made great strides in recent years in strengthening workers' rights and status in their employment. This process has focused attention on the importance of satisfactory procedures to deal with dismissals. Employers and trade unions alike realise increasingly that fair and sensible procedures, clearly established and understood by workers and management at all levels, can do much to improve industrial relations by preventing grievances and disputes over dismissals.

This is the report of a Committee which my National Joint Advisory Council set up in April 1965 to examine dismissals and dismissal procedures. The report brings out very clearly the value of sound procedures within the firm. It shows, too, the importance of external procedures which in many industries can consider cases which have not been satisfactorily settled within the firm. The report recommends that industries should consider the need to establish or improve such arrangements. The report also considers the case for and against statutory machinery for appeal against dismissal. It concludes that there are strong arguments against the introduction of legislation at an early date, but that I should review the position in due course in the light of the progress made on a voluntary basis.

When the National Joint Advisory Council discussed the report there was a wide measure of agreement with its conclusions. All those represented supported its recommendations on internal and external dismissal procedures and on the importance of improving and developing these. On the question of statutory machinery, however, the T.U.C.—while agreeing with the report's conclusion that, if such machinery is introduced, it should be flexible and complementary to voluntary procedures—considered that there should be legislation to give a right of appeal against dismissal, with provision for exemption (as the report recommends) for satisfactory voluntary procedures. The question of legislation on this subject will need to be considered further after the Royal Commission on Trade Unions and Employers' Associations has reported.

I hope the publication of this report will stimulate the growing interest in dismissal procedures and encourage the development and extension of good procedures throughout industry.

Contents

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